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AMERICAN AND BRITISH
CLAIMS ARBITRATION.

FREDERICK GERRING, JR.

MEMORIAL
OF THE UNITED STATES
IN SUPPORT OF THE CLAIM.

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AMERICAN AND BRITISH CLAIMS ARBITRATION.

THE FREDERICK GERRING, JR.

Memorial of the United States in Support of the Claim.

The *Frederick Gerring, Jr.*, was an American fishing vessel duly registered in accordance with the laws of the United States at the port of Gloucester, in the State of Massachusetts, and owned and officered by American citizens.¹ Being licensed and equipped for a fishing voyage in the North Atlantic Ocean, she set sail from Gloucester on May 13, 1896.²

At about three o'clock in the afternoon of the 25th of May, 1896, the *Gerring* arrived in the neighborhood of White Island, off the coast of Nova Scotia, where Daniel Doren, her master, observed a number of other American fishing vessels fishing for mackerel at a distance of more than three marine miles from the coast of Nova Scotia, and also a sailing cruiser of the Dominion of Canada, the *Vigilant*, commanded by Captain Hector MacKenzie, patrolling those waters. While upon the high seas and near the *Vigilant* the master of the *Frederick Gerring, Jr.*, saw a school of mackerel about one hundred and fifty yards to the southward of the cruiser, and heard the commander of the *Vigilant* assure the master of one of the other American fishing vessels, the *Margaret Haskins*, that the *Vigilant* was jogging on the line, that the school of mackerel was "all right," and "to go ahead," meaning that the fish were beyond Canadian jurisdictional waters.³ To satisfy himself further upon this point Captain Doren hailed the boat of the *Haskins*, which already had its seine out, and inquired of the master how far outside of the three-mile limit of Canadian territorial waters he then was. In response to this inquiry, the master replied that the commander of the *Vigilant* had just informed him that the *Vigilant*

¹ Appendix, pp. 11-12.

² Appendix, pp. 13-14.

³ Appendix, pp. 14, 20, 21.

was on the line and that the school of mackerel was outside. Relying upon this assurance of the Canadian officer, Captain Doren proceeded to set his seine, which was of the type called a "purse seine," and surrounded the school of mackerel at a distance of at least a half mile seaward from the *Vigilant* and fully three and one-half marine miles from the ledge of rocks known as Gull Ledge, which rocks lie more than three miles from the mainland of Nova Scotia. The Captain of the *Vigilant* testified positively that at the time the fish were impounded they were "a good half mile" outside the three-mile limit.⁴

Having surrounded the school of mackerel with his purse seine, the master of the *Frederick Gerring, Jr.*, proceeded to secure the fish enclosed by drawing up the purse string of the seine. The seine was then lashed fast to the vessel and hoisted up so that the fish, which had been taken, could be "bailed," or removed with dip nets from the pursed-up seine to the deck of the vessel in the manner usually practised by fishermen.⁵

All these fishing operations took place in the presence of the commander of the *Vigilant*, who remained in the neighborhood of the *Frederick Gerring, Jr.*, without interfering with her operations, for about an hour after the crew of that vessel had commenced to bail the fish from the seine.⁶

While the crew of the *Frederick Gerring, Jr.*, were still engaged in removing the captured fish to the deck of their vessel, the *Vigilant* sailed away to the westward.⁷ She passed and saluted the Dominion Cruiser *Aberdeen*, commanded by Charles Knowlton, a vessel likewise engaged in the Fishery Protection Service of Canada. At about 6 o'clock in the afternoon the *Aberdeen* approached the *Gerring*, and Captain Knowlton came on board the vessel and seized her for fishing within Canadian jurisdictional waters,⁸ notwithstanding the protest of Captain Doren that he knew he could not be within three miles from the nearest British land, and notwithstanding his statement that the commander of the *Vigilant* had assured the American fishermen that they were outside

⁴Appendix, pp. 21, 71.

⁵Appendix, pp. 46, 92, 112, 116, 117.

⁶Appendix, pp. 22, 66, 67.

⁷Appendix, p. 67.

⁸Appendix, pp. 22, 26.

the jurisdictional waters and had permitted the *Gerring* and other American fishing vessels without molestation or objection to catch and bail their fish in the same place where the seizure was made.⁹

It should be further observed as evidence of the conviction of Captain Doren that he was upon the high seas, that he requested the commander of the *Aberdeen* to measure the actual distance of the *Frederick Gerring, Jr.*, from the nearest British or Canadian land, but this the commander refused to do,¹⁰ and proceeded to seize the vessel despite the fact that she was more than three marine miles from any of the coasts, bays, creeks, or harbors of Canada and was not at the time fishing or preparing to fish within the territorial waters of Canada.

Having arrested and seized the *Frederick Gerring, Jr.*, the commander of the *Aberdeen* put a prize crew on board the vessel and proceeded to tow her to the harbor of Liscombe, in Nova Scotia and thence to Halifax.¹¹ While towing the vessel from the place of seizure to Liscombe, the commander of the *Aberdeen* caused the *Gerring* to swing into the trough of the sea, with the result that forty barrels of the mackerel taken by her and bailed onto her deck were washed overboard and lost.¹²

Action for forfeiture was brought by the Government of Canada against the *Frederick Gerring, Jr.*, her cargo, tackle, rigging, apparel, furniture and stores, in the Exchequer Court of Canada, Nova Scotia Admiralty District, on May 29, 1896. The case was tried in the said court and on August 28, 1896, the vessel, her cargo, tackle, rigging, apparel, furniture and stores, together with the fish, seine, fishing gear, supplies and other property on board of her at the time of her seizure, were condemned as forfeited to the Crown, and the owner of the vessel was ordered to pay the costs of the action.^{12a}

On September 1, 1896, an appeal from this judgment was taken by the owner to the Supreme Court of Canada, and the judgment was affirmed in May, 1897, by a divided court; three of the Justices concurring in the decision, and two, one of whom was the Chief Justice, dissenting.¹³

⁹Appendix, pp. 14, 15, 22.

¹⁰Appendix, pp. 15, 27.

¹¹Appendix, p. 23.

¹²Appendix, pp. 15, 23, 24.

^{12a}Appendix, pp. 100.

¹³Appendix, pp. 111-143.

Meanwhile, immediately following the condemnation of the vessel by the Exchequer Court, a copy of the judgment with a statement of the facts in the case was brought to the attention of the Government of the United States, and an earnest appeal was made that steps be taken to protect the interests of the owner of the vessel, who was about to be deprived of his property by a court without jurisdiction, the vessel having been taken on the high seas, and under a judgment admittedly founded upon a technicality, even conceding the vessel to have been seized in Canadian waters.

The Government of the United States upon investigation felt convinced that the seizure of the *Gerring* was unwarranted, but considering it expedient to rely upon an intimation contained in the judgment of the Exchequer Court that the case was one which properly called for the exercise of executive clemency, it presented the case to Her Majesty's Government with that end in view, confidently believing that the justice and equity of that Government would not permit the penalty of forfeiture to be imposed in a case where, if there had been any infraction of the Canadian statute at all, it was of a purely accidental and technical nature.

The presentation of the case was made to the Government of Great Britain on November 6, 1896,¹⁴ and on February 20, 1897, that Government replied that nothing could be done until the case had been heard on appeal in the Supreme Court of Canada.¹⁵

The decision of the Supreme Court was rendered in May, 1897, with the result as set forth above. In view of the strong stand taken by two of the justices, one of whom was the learned Chief Justice, against the condemnation of the vessel, the Government of the United States again brought the matter to the attention of Her Majesty's Government in the belief that speedy and efficacious relief would be granted.¹⁶

In July, 1897, the Government of Great Britain notified the Government of the United States that in view of all the circumstances of the case the Canadian Government had decided that the vessel should be restored to her owner, on payment of a nominal fine, together with the costs incurred in her prosecution.¹⁷

¹⁴Appendix, pp. 104-106.

¹⁵Appendix, p. 107.

¹⁶Appendix, pp. 148-150.

¹⁷Appendix, pp. 151, 152, 154, 155.

Believing at the time that the measure of clemency offered by Her Majesty's Government would afford a fair measure of relief and reduce the loss of the owner of the vessel to a sum which might be disregarded, the Government of the United States expressed to the Government of Great Britain the gratification with which it had learned of the decision of the Canadian Government, although it had not changed its opinion that the seizure was illegal and that the judgment of condemnation was tantamount to a denial of justice.¹⁸

When the offer of the Canadian Government was communicated to the owner of the *Gerring*, he replied that the vessel and her equipment had become damaged to such an extent while in the possession of the Canadian authorities that they were not worth the amount of the costs which the terms of the offer required him to pay. The charges against the vessel amounted to \$1,217.25. Against this there was a credit of \$606.55 on account of the sale of the mackerel on board the vessel when she was brought into port after the seizure. These mackerel had not been properly cared for and they sold for less than half their original value. The owner's loss on this item alone was over \$800. In addition, his legal expenses had been over \$1,400. Furthermore, the vessel had deteriorated until she was practically useless; and the seine, which when seized was worth \$1,000, had been ruined, so that at the time it was sold it brought only \$40,¹⁹ and a similar depreciation in value had taken place in all of the equipment and stores on board the vessel.²⁰ It can well be conceived that having suffered such heavy losses already, the owner was not inclined to pay over six hundred dollars more to the Canadian Government for the privilege of recovering the remnants of his property which had been wrongfully seized and allowed to become ruined through the negligence of the Canadian authorities.

The Government of the United States, in view of the owner's refusal of the offer of the Canadian Government, and in order to determine whether or not such refusal was justifiable, suggested to the Government of Great Britain that a survey be made of the vessel and equipment by a representative of the Canadian Government and

¹⁸Appendix, pp. 153, 159, 160.

¹⁹Appendix, pp. 155, 157, 210.

²⁰Appendix, p. 155.

a consular officer of the United States as to the condition of the condemned property, but this suggestion being objected to by the Canadian Government, was declined by the Government of Great Britain.²¹

Failing in its efforts to induce the Government of Great Britain to make suitable reparation to the owner of the *Frederick Gerring, Jr.*, for the loss suffered by him, the Government of the United States closed the diplomatic correspondence by informing the British Government that the United States would expect that in any arrangement that might be made for the arbitration of outstanding claims between the two Governments, the claim of the *Frederick Gerring, Jr.*, would be included, so that the case could be heard upon its merits. The claim was accordingly included in the schedule of claims attached to the Special Agreement of August 18, 1910, and is now presented to the Arbitral Tribunal for determination.

The Government of the United States contends that the seizure of the *Frederick Gerring, Jr.*, was an unjustifiable and wrongful act on the part of the Canadian authorities, and that the subsequent condemnation and forfeiture of the vessel constitute a manifest denial of justice for which the Government of His Britannic Majesty are liable to the Government of the United States, because—

First. The *Frederick Gerring, Jr.*, when seized by officials of the Canadian Government, was upon the high seas.

Second. The *Frederick Gerring, Jr.*, when so seized, had not been taking, drying or curing fish on, or within three marine miles of any of the coasts, bays, creeks or harbors of Her Britannic Majesty's dominions in America.

Third. The *Frederick Gerring, Jr.*, when so seized, was not within any bay or harbor of Her Britannic Majesty's dominions in America.

Fourth. The *Frederick Gerring, Jr.*, when so seized, was not found fishing or preparing to fish or to have been fishing in British waters within three marine miles of any of the coasts, bays, creeks or harbors of Canada.

Fifth. The *Frederick Gerring, Jr.*, when so seized, had not entered British waters for any purpose not permitted by treaty or

²¹Appendix, p. 167, 169.

convention or by any law of the United Kingdom or of Canada for the time being in force.

The Government of the United States therefore claims from the Government of His Britannic Majesty on account of the wrongful seizure, condemnation and confiscation of the American fishing vessel, the *Frederick Gerring, Jr.*, her equipment, tackle, apparel, furniture, implements, effects, stores and cargo the sum of \$12,642.61,²² together with interest thereon from May 25, 1896.

ROBERT LANSING,
Agent of the United States.

²²Appendix, pp. 198, 199.

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EXHIBIT 1.

*Consolidated Certificate of Enrollment and License of the
Frederick Gerring Jr.*

Certificate No. 41.	<i>Permanent.</i>	Official Number.
		Numerals. Letters.
		9905

THE UNITED STATES OF AMERICA.

CERTIFICATE OF ENROLLMENT.

(Section 4319, Rev. Stats., and Act
of April 24, 1906.)

In Conformity to Title L, "Regulation of Vessels in Domestic Commerce," of the Revised Statutes of the United States.

Edward Morris of Gloucester, Mass., having taken and subscribed the oath required by law, and having sworn that he is a citizen of the United States, and the sole owner of the vessel called the *Frederick Gerring, Jr.*, of Gloucester, whereof John A. Campbell, a citizen of the United States, is master, and that the said vessel was built in the year 1870, at Essex, Mass., of wood, as appears by Register No. 47, issued at the office Nov. 29, 1892, now surrendered. Trade changed, and said register having certified that the said vessel is a Sch.; that she has 1 deck, 2 masts, Billet head, square stern; that her length is 73 $\frac{6}{10}$ feet, her breadth 21 $\frac{1}{10}$ feet, her depth 7 $\frac{7}{10}$ feet, her height — feet; that she measures as follows:

	Tons.	100ths.
Capacity under tonnage deck.....	64	03
Capacity between decks above tonnage deck.....
Capacity of inclosures on the upper deck, viz.....	6	85
Gross Tonnage	70	88
Deductions under Section 4153, Revised Statutes, as amended by Act of March 2, 1895:		
Crew space, Master's cabin,		
Steering gear, Anchor gear, Boatswain's stores,		
Chart House, Donkey engine and boiler,		
Storage of sails. Propelling power,		
Total Deductions 5%	3	54
Net Tonnage	67	34

that the following-described spaces, and no others, have been omitted, viz. and said Vessel has been duly Enrolled at the Port of Gloucester.

GIVEN under my hand and seal at the Port of Gloucester in the District of Gloucester this 9th day of February in the year 1893.

J. WARREN WONSON,
Spc. Dy. Collector of Customs.

.....

Naval Officer. (Seal.)

A true Copy Attested—
Dy. Collector.

(Seal reading)
District of Gloucester,
Collector of Customs,
Port of Gloucester, Mass.

Custom House, Gloucester, Mass., Nov. 5, 1912.

A true copy, attest:

A. H. MACKENZIE.

EXHIBIT 2.

Certificate of Naturalization of Edward Morris.

UNITED STATES OF AMERICA.

SEAL OF THE UNITED STATES.

Massachusetts District, SS.

To all people to whom these presents shall come: **Greeting.**

KNOW YE, That at a District Court of the United States, holden at Boston, within and for the Massachusetts District, on the 20th day of July, in the year of our Lord one thousand eight hundred and sixty-six.

EDWARD MORRIS

of Gloucester in said district, a fisherman born in Guysboro, Nova Scotia, having duly made the affidavit and taken and subscribed the oath required by law, was

ADMITTED TO BECOME A CITIZEN OF THE UNITED STATES, according to the Acts of Congress in such case made and provided, all of which appears of record in said Court.

Seal of the District
Court
Massachusetts

In Testimony Whereof, I have heretofore set my hand and affixed the seal of said Court at Boston aforesaid, this 6th day of November A. D. 1912 and in the one hundred and thirty-seventh year of the Independence of the United States of America.

HERBERT W. LEWIS,
*Deputy Clerk of the District Court
of the United States, for the District
of Massachusetts.*

EXHIBIT 3.

Affidavit of Daniel Doren, Master of the Frederick Gerring, Jr.

CANADA

Province of Nova Scotia.

To wit,—

I, Daniel Doren of Gloucester in the United States of America master mariner, but at present of the City of Halifax make oath and say as follows:—

I say that I was recently master of the fishing schooner *Frederick Gerring, Jr.*, on a fishing voyage from Gloucester aforesaid for the Cape shore off the coast of Nova Scotia mackerel fishing.

That said schooner left Gloucester on the thirteenth day of May instant, and arrived off White Island to the westward of Liscombe in Nova Scotia on Monday, the 25 day of May, instant.

That on our arrival off White Island we found a number of American fishermen mackerel fishing outside of the three-mile limit, and the Dominion Fishery Cutter *Vigilant* coursing along the said limit watching that no foreign vessel should fish inside of said limit.

That we saw a school of mackerel between our vessel and the *Vigilant* distant about one hundred and fifty yards to the southward of the *Vigilant*.

That at that time Charles Hardy, captain of the American schooner *Margaret Haskins*, was in his boat between his vessel and the *Vigilant* and in my hearing and that of my crew inquired of the commander of the *Vigilant* if the school of fish then running and to the southward of the *Haskins* were all right, meaning whether the said fish were outside of the three-mile limit; that the said commander informed him in my hearing and that of my crew that "they were all right," meaning that we could proceed to catch them. The *Gerring* then lay outside and to the southward of the *Haskins* about seventy-five yards, and about two hundred yards outside of the three-mile limit.

We then in order to be sure that we heard aright started in our own boat towards the captain of the *Haskins* and hailed him and asked him how far he was off the limit and he said that the captain of the *Vigilant* was then on the three-mile line and had informed him that the fish to the southward of his vessel were outside of that limit; we then proceeded to set our seine outside of said limit about two hundred yards but not less than one hundred and fifty yards outside of said line and caught the school of fish. That while so at work the said schooner *Vigilant* sailed up and down on the said line limit and saw the *Gerring* and the *Haskins* at work and never interfered or forbid either of them from fishing or in any way informed me we were inside of said limits. That the *Haskins*, having caught her school of mackerel, sailed away in the presence of the *Vigilant* and was not interfered with.

That the crew of the *Gerring* bailing about eighty barrels of the fish into the schooner, when the *Vigilant* hoisted her lightsails and stood away to the westward, and the Dominion fishery cutter steamer *Aberdeen* hove in sight. We continued getting in our fish and he steamed up alongside of us and her captain

and some of the crew came on board when I met him, when he said to me, "I think you are fishing inside of the limit." I told him that it was impossible, that the *Vigilant* was sailing up and down on the line limit and told him of the instructions the captain of the *Vigilant* had given the master of the *Haskins* in my presence, and that we were to the southward of the *Haskins* and that while we had been fishing the *Vigilant* never interfered with us, although he saw. He then asked me for my compass. I took it out of the binnacle and put it on the house. He then asked me for my chart, he looked at it and then threw it down and said it was no good. I claimed I was then about three miles and a half off the land. He said we were not. I then asked him to allow part of his crew and part of mine to tow his log or mine, or both, to the land he claimed we were nearest to, in order to test our exact distance. He refused to do it. I told him I would put a crew of my own into a boat and do it, but he would not allow me to do so. He then seized the *Gerring* and asked me for the ship's papers, which I then handed him. He then instructed my crew to keep on at work and take care of the fish.

I then asked him if he would steam to the *Vigilant*, who was lying about one-quarter of a mile to the westward of us, and ascertain from her captain whether he had not told the captain of the *Haskins* he was outside of the limit, but he refused to do so. I then repeatedly requested him to permit me to tow my log to Liscombe Light, but he refused. I said I would throw the log over, and he refused to permit me, and gave his officers instructions not to permit it.

When he took us in tow he slewed us quickly into the trough of the seas and by that means about forty barrels of fish went overboard.

Signed

DANIEL DOREN.

Sworn to at Halifax in the County of Halifax and Province of Nova Scotia, this 30th day of May, A. D. 1896.

Before me

DARIUS H. INGRAHAM,
Consul General.

Consulate General of the United States, Halifax, N. S., May 30,
1896.

A true copy of the original filed at this office.

DARIUS H. INGRAHAM, *Consul General.*

EXHIBIT 4.

Affidavit of Members of Crew of Frederick Gerring, Jr.

We the undersigned whose names are hereunto subscribed, do severally make oath and say that the affidavit of Captain Daniel Doren, Master of the schooner *Frederick Gerring, Jr.*, now read over to us on this thirtieth day of May, A. D. 1896, is just and true, and that we are the crew of said schooner and have personal knowledge of the facts therein stated.

Signed.....

{ JAMES GRACIE.
HARVEY L. BAILEY.
HENRY BURMEISTER.
JOSEPH CARPENTER.
JOHN GOFF.
JOHN R. GAMMETT.
LEANDER GAUDET.
ALFRED DEANE.

Sworn to at Halifax in the County of Halifax and Province of Nova Scotia, the 30th day of May, A. D. 1896.

Before me

DARIUS H. INGRAHAM,
Consul General.

Consulate General of the United States, Halifax, N. S., May 30,
1896.

A true copy of the original filed at this office.

DARIUS H. INGRAHAM,
Consul General.

Seal.

EXHIBIT 5.

Transcript of Proceedings in the Admiralty Court for Nova Scotia.

IN THE SUPREME COURT OF CANADA, 1896.

ON APPEAL.

from the

Nova Scotia Admiralty District of the Exchequer Court.

Between	{	THE SHIP <i>Frederick Gerring, Jr.</i> , her cargo, etc.,
		<i>Defendants, (Appellants),</i>
		and
		OUR SOVEREIGN LADY THE QUEEN,
		<i>Plaintiff, (Respondent).</i>

No. 73.

IN THE EXCHEQUER COURT OF CANADA.

NOVA SCOTIA ADMIRALTY DISTRICT.

OUR SOVEREIGN LADY THE QUEEN,

Plaintiff,

and

THE SHIP *Frederick Gerring, Jr.*, her cargo, tackle, rigging,
apparel, furniture and stores,

Defendant.

ACTION FOR FORFEITURE.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, Empress of India:

To the owners and all others interested in the ship *Frederick Gerring, Jr.*, her cargo, tackle, rigging, apparel, furniture and stores.

WE COMMAND you that within one week after the service of this writ, exclusive of the day of such service, you do cause an appearance to be entered for you in our Exchequer Court of Canada, in the above action, and take notice that in default of your so doing, the said action may proceed and judgment may be given in your absence.

Given in Halifax, at our said Court, under the seal thereof, this 29th day of May, 1896.

(Sgd) L. W. DES BARRES.

This writ may be served within twelve months from the date hereof, exclusive of the day of such date, but not afterwards.

The defendants may appear hereto by entering appearance either personally or by solicitor, at the District Registry of the said Court situate at Halifax.

The Honorable Arthur R. Dickey, Her Majesty's Attorney-General for the Dominion of Canada, on behalf of Her Majesty the Queen, claims to have the ship *Frederick Gerring, Jr.*, being a foreign ship or vessel not navigated according to the laws of the United Kingdom of Great Britain and Ireland, or of Canada, registered in and owned by foreigners residing in the United States of America, and her cargo, tackle, rigging, apparel, furniture and stores condemned as forfeited to Her Majesty for violation of a certain convention between His late Majesty George the Third, King of the United Kingdom of Great Britain and Ireland, of the one part, and the United States of America of the other part, made and signed at London, in Great Britain, on the 20th day of October, in the year of our Lord, 1818; and also for the violation of the Act of Parliament of Great Britain and Ireland, made and passed in the fifty-ninth year of the reign of His late Majesty George the Third, King of the United Kingdom of Great Britain and Ireland, being Chapter 38 of the Acts of the said Parliament, made and passed in the said year, and being entitled: "An Act to enable His Majesty to make regulations with respect to the 'taking and curing of fish on certain parts of the coasts of Newfoundland, Labrador, and His Majesty's other possessions in North America, according to a convention made between His Majesty and the United States of America.' "

The said Honorable Arthur R. Dickey, Her Majesty's Attorney-General for the Dominion of Canada, on behalf of Her Majesty the Queen, also claims to have said ship *Frederick Gerring, Jr.*, being a foreign ship as aforesaid, and her cargo, tackle, rigging, apparel, furniture and stores condemned as forfeited to Her Majesty the Queen for violation of "The Revised Statutes of Canada, Chapter 94," made and passed by the Parliament of the Dominion of Canada, and entitled: "An Act respecting Fishing by Foreign Vessels, and the Acts in Amendment thereof."

This writ was issued by W. B. A. Ritchie, of 121 Hollis Street, in the city of Halifax, in the Province of Nova Scotia, Solicitor for the Attorney-General of Canada.

All documents required to be served upon Her Majesty the Queen, who is the plaintiff in this action, may be left at the office of Borden, Ritchie, Parker & Chisholm, 121 Hollis Street, in the city of Halifax aforesaid, the same being the address of Her Majesty for all purposes of this action.

(Sgd) W. B. A. RITCHIE.

*Solicitor of the Attorney-General of Canada,
on behalf of Her Majesty the Queen.*

IN THE EXCHEQUER COURT OF CANADA.

NOVA SCOTIA ADMIRALTY DISTRICT.

No. 73.

THE QUEEN, *Plaintiff,*

—against—

THE SHIP *Frederick Gerring, Jr., Defendant.*

Examination of witnesses called on behalf of the defendant before L. S. Des Barres, Deputy Registrar of the Court, Saturday, the 30th day of May, A. D. 1896.

Present:

Mr. W. B. A. Ritchie, Q. C., for Plaintiff.

Mr. W. F. MacCoy, Q. C., for Defendant.

DANIEL DOREN, called and sworn.

Examined by Mr. MacCoy:

Q. You are the master of the schooner *Frederick Gerring, Jr.*? A. Yes.

Q. She has been recently seized for an alleged violation of the Fisheries Act? A. Yes.

Q. Where was she seized? A. She was seized between White Island and Liscombe.

Q. The owner belongs to Gloucester, Massachusetts? A. Yes.

Q. When did you leave there? A. We left there on the 13th day of May:

Q. That is the present month? A. Yes.

Q. For what place did you leave? A. For the Cape Shore, off shore, Nova Scotia.

Q. You came fishing? A. Yes.

Q. What time did you arrive off White Island? A. We got there about 3 o'clock in the afternoon of Monday, May 25th.

Q. When you arrived off White Island, did you see any American vessels there? A. Yes, there were a dozen of 15 sail.

Q. Did you see the Dominion cruiser *Vigilant* there? A. Yes, she was inshore, standing up to the westward.

Q. What sails had she on? A. She had on 4 lower sails and the main top sail.

Q. Was there any vessel laying to between the *Vigilant* and your vessel? A. Yes, there were four vessels between us and the *Vigilant*.

Q. Do you remember seeing the schooner *Margaret Haskins* there? A. Yes, she was there.

Q. Who was her master? A. It was Capt. Charles Hardy.

Q. When you arrived, after you came to, did you see him anywhere? A. Yes, we saw mackerel rise between us and the *Vigilant* and Capt. Hardy went in his boat to speak the *Vigilant*.

Q. Did he hail the captain of the *Vigilant*? A. Yes.

(Mr. Ritchie:—Did you hear what was said? A. Yes, quite plainly. He asked him how these mackerel were, pointing towards the schools; the schools were to the south of Hardy. The captain of the *Vigilant* made the remark that he was jogging on the line, and that the fish were all right.

Q. He said that the *Vigilant* was jogging on the line, and that the mackerel were all right? A. Yes.

Q. You heard that remark? A. Yes.

Q. Where were your crew at the time? A. They were all on deck; I was aloft at the mast head.

Q. At that time where did the *Gerring* lie? A. I think she was about 75 or 100 yards to the south of Hardy.

Q. How far did you judge yourself to be from the line that the *Vigilant* was on? A. I thought we were nothing less than 150 yards, if not more; I did not think we were anything over that.

Q. You thought you were 150 yards to the south of the *Vigilant*? A. Yes.

Q. At that time the school of fish was running? A. Yes, they were all up playing in the water.

Q. Now, did you get out your seine? A. No, we wanted to find out first that we did not make any mistake in regard to the instructions given by the captain of the *Vigilant* to Capt. Hardy, and we rowed up to Capt. Hardy's boat; we got in our boat and rowed up to Capt. Hardy's boat to ask him. He had his seine out then (Mr. Ritchie objects to evidence of conversation between witness and Capt. Hardy). We asked Capt. Hardy what the captain of the cutter said, and he told us that he said he was jogging on the line. We had heard him say that, but we wanted to make sure. Capt. Hardy said to go ahead and set, that the captain of the *Vigilant* said he was jogging on the line, and we did set and soon caught the fish.

Q. When you went in the boat, did all of your men go with you? A. Yes, all went except the cook, who was left in charge of the vessel.

Q. After getting the statement from Captain Hardy, you set the seine and caught the fish? A. Yes.

Q. While you were at work did the *Vigilant* sail up and down past you? A. Yes, she passed us three times.

Q. How close was she to you while you were fishing? A. I judge that she would be 150 yards inshore of us to the northward, if not more.

Q. Did the *Vigilant* interfere with you or with the *Haskins*? A. No, she never bothered us in the least; she was there an hour if not longer.

Q. The captain of the *Vigilant* never hailed you or said that you were inside the limits? A. No, not in any shape or manner after telling us that he was on the line.

Q. What did the captain of the *Haskins* do? A. He bailed his fish in and went off looking for more.

Q. The *Vigilant* was still there? A. Yes, she was still there inshore of us.

Q. And were you outside of the *Haskins*? A. We were right close to her, a little on the outside, about 20 yards.

Q. When she was sailing away did the *Vigilant* interfere with her? A. No, not in the least.

Q. After you got your fish in the seine, what did you do? A. We shot the vessel alongside and hoisted them out.

Q. While you were bailing the fish into the schooner what occurred? A. The *Vigilant* lay there until we had about 80 barrels on board. She stood to the west while we were setting and then to the east; then she came back and lay there, that is, jogging about until we had the 80 barrels on board. When we had half the fish on board, the *Vigilant* stood to the westward.

Q. What occurred then? A. The first thing then the *Aberdeen* steamed up. I think the *Vigilant* had been gone about 40 minutes then.

Q. Was there very little wind at the time? A. No, there was just a little air.

Q. Did the *Aberdeen* come up alongside of you? A. Yes, the *Vigilant* and the *Aberdeen* passed one another and dipped their flags to each other. The *Aberdeen* steamed up alongside under our quarter, and the captain came on board and said that we were inside the limit.

Q. Who was the captain of the *Aberdeen*? A. His name was Capt. Knowlton.

Q. What did you say? A. I said it was impossible, as the cutter had just left us, and gave us the statement that he was on the line.

Q. Did you say that while you were taking the fish the *Vigilant* stood past you? A. Yes, I told him the whole circumstances.

Q. What did he say to that? A. He said that we were inside the limit, and asked me for my compass, and I took it out of the binnacle and put it on the deck.

Q. What did he do with it? A. He asked for the chart, and I brought it on deck, and he said it was no good and threw it on the house.

Q. What chart was it? A. It was the George Eldridge chart (chart to be produced).

Q. Did you make any attempt to find out from the chart where you were? A. No sir, I did not think it necessary; I still claimed to be over three miles from the shore.

Q. What did he say to you after that? A. He said I was not, and I asked him to convince me by taking our boat or one of his boats, and towing the log to the Gull Ledge on the chart.

Q. Did you say your log? A. No, I said our log or his log or both; the ledge was the nearest ledge to us.

Q. What is the ledge? A. It is just a wash rock; that is what we call it.

Q. What did he say to that? A. He said he did not think he would bother about it. I asked whether he would let my crew tow the log with one of his officers, and he further objected. He read the law to me and said that we were under seizure and I handed him the papers.

Q. Did he ask you for your papers? A. Yes.

Q. What further conversation had you with him? A. The crew knocked off work and came aft, and he said, "Keep right on men, and take care of your fish." I asked him to speak to the captain of the *Vigilant* and ask him if what I said was not true, and he said he would not.

Q. Where was the *Vigilant* at that time? A. She was about a quarter of a mile on our lee bow to the westward.

Q. He refused you? A. Yes. He said that there was plenty of time to do it, but he would not do it. When he got the line to our vessel and was leaving, I asked him if I could tow the log to Liscombe Light, and he said no. I said that I still claimed to be over 3 miles from the land. When he was in the boat I said to him that I was going to throw the log, and he said to his officer on board, "Mr. Bennet, don't allow it."

Q. That was said to the officer in charge? A. Yes.

Q. You were seized and brought eventually to Halifax? A. We were taken into Liscombe Harbor that night. As we were going into Liscombe, I did not think it would be any harm to tow the log.

Q. When the line was put aboard your vessel, in starting ahead did anything occur? A. He slewed us around in the trough

of the sea and 30 or 40 barrels of mackerel went over. His officer then ran forward and told him to ease up, that he was washing the fish off the deck.

Q. How far do you judge you were to the southward of the Gull Ledge, the wash rock you spoke of, at the time you were seized, would you be 3 miles? A. Yes, anyone would think by the way the vessels were fishing that we were three miles and a half.

Q. At the time of the seizure how was your vessel heading? A. She was heading S. E. or E.

Q. Was there much wind at the time? A. No, there was not a great deal; it was very light.

Q. Do you remember anything else that you want to say? A. No, that is all.

Cross-examined by Mr. Ritchie:

Q. What day of the month was it that you arrived off of White Island? A. It was the 25th of May.

Q. Did you come to anchor there? A. No sir.

Q. How long did you remain there? A. Well, I should think from the time we went out in our boat until we were taken would be about two hours.

Q. What time in the afternoon did Captain Knowlton come on board your vessel? A. I think it was between 5 and 6 o'clock, but I don't know the exact time.

Q. Now, you say that you yourself heard someone on the *Vigilant* say that she was jogging along the line? A. Yes, sir.

Q. Could you tell me who it was that said that? A. No, I could not.

Q. How long was it after you arrived there that you heard that. A. It was just as we got near enough to hear it; just as we arrived.

Q. Was it after that or before that you lay to? A. They call it laying to when you are hoisting out the fish after you catch them.

Q. But after you arrived there you lay to? A. We were sailing right along going east and the cutter was jogging to the west. We only hauled our jibs after we took the fish; we were fishing under full sail.

Q. Which way were you going? A. We were working to the eastward.

Q. Which was nearest to the shore, the place where Capt. Hardy pulled his fish or the place where you did? A. I think Capt. Hardy was a little to the north of us; a very little.

Q. You said that when he pulled his fish you were a little outside of him? A. Yes.

Q. How long was it after he pulled his fish, that you pulled yours? A. It was about the same time.

Q. Who got through first? A. He did, but he did not have so many fish.

Q. How long did he get through before you did? A. I should say it was 45 minutes or an hour.

Q. In that time you would make in a little towards the shore? A. That I could not say.

Q. I want to have your judgment about it? A. I don't see how we could make a S. W. drift; we were heading S. E. by E. and I think we were drifting S. W.

Q. You say that according to your judgment, you were the same distance from the shore when you began to bail the fish, that you were when you finished? A. No, when the cutter took us I think we were a little south of where we commenced work; I think we were a little further from the shore than when we began.

Q. But nothing material? A. No, there was not much wind.

Q. You saw where Capt. Hardy caught his fish? A. Yes, quite plainly.

Q. Was it inside of where you caught yours? A. Yes, I think the vessels were 20 yards apart. We were lying on a line and I was just about the same distance from the shore that he was.

Q. About what time did you put your net out? A. It was pretty close around 4 o'clock.

Q. You had heard an hour before that, that you were pretty near the line? A. No sir, I heard the captain of the cutter say that he was on the line.

Q. But you were near it? A. I was outside of him.

Q. You consider that you were outside the line? A. Yes, about 150 yards.

Q. Which end of the net would be 150 yards from the line? A. The boat would be that far from the line.

Q. Would not the net be on the shore side of the boat? A. No, it would be on the ocean side of it.

Q. And the place you bailed the fish from the net to the boat would be nearer the shore than where you set your net? A. No, not the way the wind was; we had to have the net between us and the vessel to make the bag to bail the fish out; which would fetch the vessel outside the net.

Q. You took the fish directly from the net into the vessel? A. Yes.

Q. Now, I understand you to say that the net was set inside the vessel? A. No sir, I don't remember saying that.

Q. Is this correct,—that there was nothing to keep either the small boat or the schooner from drifting inshore? A. Well, I should say that they would have to go contrary to the laws of God to do that.

Q. There was nothing to prevent them from doing that unless the wind and tide would do so? A. No, that is the only thing.

Q. These were the first fish you had taken this season? A. No, we took 20 salt barrels off Halifax on Sunday.

Q. You have fished this shore before have you? A. Yes, I have fished it for 5 or 6 years.

Q. Did the *Vigilant* speak the *Aberdeen*? A. I did not notice them doing so, but I heard some of the crew who were watching our vessel say that they saluted.

Q. You said that the *Aberdeen* dipped her flag to the *Vigilant*? A. I did not see it done, but I was told so.

Q. Have you ever been at that particular place before, fishing off Gull Ledge? A. Yes, I have been there every season; it is a good place for mackerel.

Q. Have you ever been on that place called Gull Rock Ledge? A. No, I have never.

Q. How near have you been to it? A. I have been within, from half to a quarter of a mile to it; we came very close to it the other day towing up here.

Q. What do you mean by a "wash rock"? A. I mean that when there is any sea on it breaks over the rock; it is just the same as the Country Harbor ledges, and all those.

Q. Do you know how wide it is? A. No, I could not tell.

Q. Or how long it is? A. No, I cannot form any idea, but it is not very long to look at.

Q. You know that it stands 30 feet out of the water? A. I know that by the chart.

Q. Are you prepared to say that you have seen the waves breaking right over that place you call Gull Ledge? A. Yes, I am prepared to swear that they were breaking over it when the steamer was towing us up here.

Q. You swear that on the 25th of May you saw the waves breaking over Gull Ledge? A. No, but on the 26th I did; I saw it when the steamer was towing us to Halifax from Liscombe.

Q. Have you seen the same thing at other times? A. Yes, quite often. I mean that the sea goes clean over the top of it, and would wash any object off it.

Q. How far was it from Gull Ledge where you caught these fish? A. I should think it was three miles and a half.

Q. What do you base that on? A. I base it on the circumstances of the naked eye, and judgment according to the looks of the headlands to me.

Q. I understood you to say that you measured with your log the distance from the place you were seized to Liscombe? A. No, I asked to be allowed to tow the log, but he refused me permission.

Q. But you said afterwards, unless I am mistaken, that when you were taken in tow, you thought it would be no harm to put the log over, when you were going to Liscombe, and I understood that you did so? A. No, I said that I told the captain of the *Aberdeen* that I was going to do so, but he refused me permission.

Q. You told Mr. MacCoy that when you were seized, you thought you were 3 miles from the wash rock? A. No, I could (*not*) say exactly; but I thought we (*were*) three miles and a half, or over 3 miles from any rock.

Q. The Gull Ledge was the nearest to you? A. Yes.

Q. It was the nearest of anything like land? A. Yes.

Q. Is this correct,—that when you were there you thought you were about 3 miles from the wash rock? A. No, I thought we were $3\frac{1}{2}$ miles from it, and so I told Capt. Knowlton.

Q. And you have still the (*same*) same idea about the distance, you don't think you made a mistake? A. No, I don't think that I was wrong. I could have been easily convinced by towing the log, but they did not seem to wish it.

Q. How was it you said the tide was running? A. I do not keep any run of the tides here. Captain Knowlton said it was running S. W.

Q. Then in regard to the way the tide was running, you got your information from him? A. Yes.

Q. You did not keep the run of it yourself? A. No.

Q. How was the wind? A. I think as near as I can judge that it was E. N. E.

Q. Are there two ledges at Gull Ledge? A. There might be, one inside of the other.

Q. You don't know whether there is a second ledge inside of the first? A. No, I can't say what is inside of it. This one lies about E. and W. coming from sea.

Q. Now that wind, the way you were lying, where would it take you? A. It would take us W. S. W.

Q. It would take you up towards Liscombe? A. No, it would take us off shore, a little up this way, clear of the land.

Q. Do you say that the drift would take you out of sight of land? A. Yes.

Q. Would it take you clear of White Island? A. Yes, away off of it.

Q. You remember the time you sent a boat on board the *Haskins*? A. We did not go aboard of her.

Q. You sent a boat to the *Haskins* did you not? A. It was to the *Haskins'* boat.

Q. Then you did not send a boat to the *Haskins*, but you sent it to the *Haskins'* boat? A. Yes, that was it.

Q. Was the boat belonging to the *Haskins* inside or outside of the *Haskins*? She was outside to the southward of the *Haskins*.

Q. When you spoke of your taking out your fish in the same place that Capt. Hardy did, you meant that when you were bailing your fish, your schooner was in the same place as his? A. Yes, they were just a little apart, so as not to interfere.

Q. Did the *Haskins* remain in the same position; I mean did she remain the same distance from the shore? A. Yes.

Q. She was under sail going up? A. Yes, just the same as our vessel.

Q. You were sailing up and down, were you, or were you keeping right along from the time you got there until 5 o'clock? A. We were sailing right along until we set for the mackerel. Then the cook kept the vessel jogging around the boat until we got the fish.

Q. Did your schooner keep the same distance from the shore all the time? A. No, when the cook is left in charge, he works around until he is wanted.

Q. Then your schooner was not the same distance from the shore all the time? A. No, she was sailing up and down between us and the *Vigilant*.

Q. How near did she go to the *Vigilant*? A. She was within 100 yards of her at one time. I did not keep the run of the vessel very much until I wanted her; then I went aboard and shot to the boat.

Q. What is the tonnage of your schooner? A. She is 66 tons.

(It is admitted that the schooner is American register.)

Q. How old is she? A. She was built in 1870 I think.

Q. Who is her owner? A. The owner is Capt. Edward Morris of Gloucester.

Q. He is an American citizen? A. Yes.

Q. Are you also an American citizen? A. Yes.

Q. Were the crew also American citizens? A. That I cannot tell you; I know that some of them are.

Q. About what is the value of this schooner; I mean with the gear and everything attached, except the fish? A. I don't know I am sure, but I would not put it over \$3,000.

Q. The gear is worth a good deal is it not? A. Yes, our gear and boat seine would be worth as much as the vessel.

Q. What is the vessel worth without seine or gear? A. I could not say. There are vessels of her age sold for \$1500 to \$1600. At auction I don't know that she would bring over \$1800.

Q. How many barrels of mackerel have you on board? A. There are 132 or 134 barrels sea packed. We would have to re-pack them when we got them home.

Q. What are they worth? A. I could not tell you.

Q. The market is uncertain? A. Yes.

Q. What are they worth now? A. I could not tell until I got them home. I have sold them for \$5. to \$10. a barrel, according to the season.

Q. You say you have no notion of what the fish are worth now? A. No, I would not risk more than \$6. a barrel for them, but you might get \$15.

Q. What license has your vessel got? A. She has a mackerel license.

Q. Who is the license issued by? A. It is issued by the American Customs Department.

Q. It is a license authorizing you to engage in mackerel fishing? A. Yes.

Q. That is the only license you have? A. Yes.

Q. You have no *modus vivendi* license? A. No.

Q. When you were fishing there, what depth of water were you in? A. We had about 28 fathom.

Q. When did you measure that? A. I measured it after the captain of the cutter came on board. I had not done so before.

Q. Could you get an idea of the bearing of Gull Ledge from your boat when you were taking out the fish? A. No, I could not.

Q. Now, if I understand your evidence, at the time you were taking the fish out your boat was nearer to the shore than either the net or the schooner? A. Yes.

Q. How far would your boat be from the line that the *Vigilant* was on when she was there? A. It looked about the same to me; I should think that we were about 150 yards from it.

Q. There would be a difference between the boat and the schooner? A. There would not be over 12 feet difference; I think we were from 150 to 200 yards from the line that the *Vigilant* was on.

Q. How long had you seen the *Aberdeen* before the captain came on board? A. We saw her when the *Vigilant* was there. We saw her as the *Vigilant* left, about $\frac{3}{4}$ of an hour before she boarded us.

Q. Did you know at the time what vessel she was? A. I had a pretty good idea of it. I had seen her the previous day and I surmised that it was her.

Q. Where did you see her the previous day? A. I saw her off Halifax; in fact we saw them every day.

Re-examined by Mr. MacCoy:

Q. At the time you went on the *Haskins'* boat, I understand that she was outside of and to the south of the *Haskins'*? A. Yes.

Q. That was the time you went to get the information about what the captain of the *Vigilant* said? A. Yes.

(The other witnesses called on behalf of defendant were here called in and the foregoing evidence was read over to them.)

JAMES GRACIE, called and sworn.

Examined by Mr. MacCoy:

Q. You were one of the crew of the *Gerring*? A. Yes.

Q. You heard the statement just read over? A. Yes.

Q. Have you a personal knowledge of the facts and statements made by the previous witness? A. Yes.

Q. What do you say as to the statement of the captain? A. I say that it is correct.

Q. You were present on all the occasions to which he referred? A. Yes.

Q. Did you hear the conversation that took place between him and Capt. Hardy? A. Yes.

Q. Did you hear the statement made by the captain of the *Vigilant* to Capt. Hardy, and referred to by your captain? A. Yes.

Cross-examined by Mr. Ritchie:

Q. Are you an American citizen? A. No, I am a Nova Scotian.

Q. Do you say that you have ever seen the breakers breaking over Gull Ledge? A. Yes.

Q. What is the nearest you have been to that place? A. The nearest I have been to it was when we came out of Liscombe in tow of the *Aberdeen*.

Q. Did you go in your boat to the boat belonging to the *Haskins*? A. Yes.

Q. How far was the *Haskins'* boat outside of the *Haskins*? A. It was about 75 yards outside of her.

Q. How far did you have to row to get to that boat? A. We had to row about 75 yards.

Q. At that time the *Gerring* was about 150 yards from the *Haskins*? A. Yes.

Q. What was the nearest that they came together? A. About 20 yards.

Q. That is when both were bailing fish? A. Yes.

Q. Had the *Haskins* gone further out or had the *Gerring* gone further in? A. I think they were on a line, about the same. We came nearer in when we picked up our boat.

Q. Where did they speak the *Vigilant* from was it from the *Haskins* or from the boat belonging to the *Haskins*? A. It was from the *Haskins'* boat that we heard them speak the *Vigilant*.

Q. Was she fishing then? A. Yes.

Q. Was she in the same place when she spoke the *Vigilant* that she was when you rowed up? A. Yes.

Q. Do you know the Captain of the *Haskins*? A. Yes.

Q. Was he the man who sang out? A. I could not tell.

Q. Tell us what it was that was sung out? A. The boat hailed the *Vigilant* and asked if he was on the line, and the *Vigilant* sung out, that they were jogging on the line. They asked from the boat if the fish were far enough off, and the *Vigilant* said that he was jogging on the line.

Q. How far was the *Haskins'* boat from the *Vigilant* at that time? A. She could not be more than 25 or 30 yards.

Q. And how far was the *Haskins* boat from the schooner at that time? A. She was not over 30 yards anyway.

Q. Did the *Haskins* go further out to sea before she sailed away with her fish? A. No.

Q. How much further in did she go? A. She did not go any further in, she stood in about the same place.

Re-examined by Mr. MacCoy:

Q. Where do you belong? A. I belong to Cape Breton.

Q. When you were towed past the ledge by the *Aberdeen* did you see the sea breaking over it? A. Yes.

Q. Was it breaking right over the 30 feet? A. Yes.

HARRY L. BAILEY, called and sworn.

Examined by Mr. MacCoy:

Q. You heard the evidence given by the captain read over? A. Yes.

Q. Are you personally acquainted with the facts that he has sworn to? A. Yes.

Q. Are the facts as sworn to by him, correct and true? A. Yes.

Q. Are all the statements made by him correct? A. Yes.

Q. You have a personal knowledge of everything that occurred? A. Yes.

Q. You are one of the crew of the *Gerring*? A. Yes.

Q. Did you hear Captain Hardy hail the *Vigilant*? A. Yes, I did.

Q. And did you hear the answer that came from the *Vigilant*? What did Capt. Hardy say? A. He asked the captain of the *Vigilant* about how the fish were in regard to the line, the school of fish that he was after. They were outside of the cutter, between the *Haskins* and the *Vigilant*.

Q. What was said from the *Vigilant* in reply? A. He said the fish were all right, that he was jogging on the line.

Q. Where was the *Gerring* at that time? A. We were outside of the *Haskins*, to the southward of her.

Q. You heard the statement made by your captain, about going to Capt. Hardy's boat to ascertain whether you had heard correctly? A. Yes.

Q. Is that statement correct? A. Yes.

Q. And are all the other statements made by your captain correct? A. Yes.

Cross-examined by Mr. Ritchie:

Q. Are you an American citizen? A. No.

Q. Where are you from? A. I was born at La Havre.

HENRY BURHESTER, called and sworn.

Examined by Mr. MacCoy:

Q. You heard the statements made by your captain read over to you? A. Yes.

Q. Have you a personal knowledge of all that he states? A. Yes.

Q. What do you say as to the statements made by him, are they correct? A. Yes.

Q. In every particular? A. Yes.

Q. Where do you belong? A. I belong to the United States.

Q. You are an American citizen? A. Yes.

JOHN GOUGH, called and sworn.

Examined by Mr. MacCoy:

Q. You also heard the statement made by the captain read over? A. Yes.

Q. Have you a personal knowledge of the facts and circumstances detailed by the captain? A. Yes.

Q. Are they true? A. Yes.

Q. Where are you from, are you an American citizen? A. My folks are; I was born at St. Johns, Newfoundland.

LEANDER GAUDET, called and sworn.

Examined by Mr. MacCoy:

Q. Where are you from? A. I am a native of Weymouth, Nova Scotia.

Q. You were one of the crew of the *Gerring*? A. Yes.

Q. You heard the statement of the captain read over? A. Yes.

Q. You have a personal knowledge of the facts and circumstances referred to by him? A. Yes.

Q. Are they true? A. Yes.

Cross-examined by Mr. Ritchie:

Q. Did you go in the boat to the *Haskins*, too? A. Yes.

Q. Had you heard the conversation between the captain of the *Haskins* and the *Vigilant*? A. Yes.

Q. Then what was your idea in asking the captain what was said? A. I can't understand what you say.

Q. Did the *Gerring's* boat go to the *Haskins'* boat? A. Yes.

Q. What did you go for? A. We went to see what the cutter said.

Q. Did you know what the cutter said before you went? A. No.

Q. You did not know until you found out from the men on the *Haskins'* boat? A. No.

Q. How long after the *Gerring* got to the fishing ground was it before you began to fish? A. I don't know exactly.

Q. Was the *Haskins'* boat near you when you were fishing? A. Yes.

Q. Which was nearest to the shore, your boat or the *Haskins'* boat? A. The *Haskins'* boat.

Q. How far were you (*from you*) from the *Haskins'* boat? A. She was about 75 yards from us.

Q. The schooner was making up and down past you while you were setting the net? A. Yes.

Q. Was she inside the net or outside? A. She was outside.

Q. Did the net drift in any from the time you first set it until you took the fish out? A. No, I don't think.

Q. Did it drift out any? A. I guess it would drift; it did not drift in.

Q. When you were in the boat which way would it drift? A. It would drift off, to the outside.

Q. You did not notice that at the time? A. No.

Q. Why, then, do you say that? A. I guess she must have.

Q. Did you notice at the time the net drifted in? A. I don't know.

Q. How did you draw the net? A. We drew it around the fish.

Q. The boat was at one end? A. Yes.

Q. Where was the other end of the net? A. We had both ends in the boat.

Q. When you drew the net, did you draw it nearer to the shore than it was when you set it? A. No.

Q. Did you draw it away from the shore? A. I don't understand.

Q. Would the net be nearer to the shore before you drew it or afterwards; would there be any difference? A. No.

Q. Had the *Vigilant* gone away before you began to find fish? A. No.

Q. She was there when you began? A. Yes.

Q. Did you keep the net in the same place all the time, or was it drawn nearer to the shore? A. It was kept in the same place.

Q. Was the net there before the *Vigilant* went away? A. Yes.

Q. Were you taking fish out of it when the *Vigilant*, went away? A. Yes.

Q. How close were you to the *Vigilant* when you were taking out the fish? A. 150 yards, I think.

Q. You mean you were 150 yards outside of her? A. Yes.

Q. That is when you commenced to take out the fish? A. Yes.

(The witness here states that he is a Frenchman, and cannot speak English well, and cannot understand the questions, and is directed to stand aside.)

JOHN GAMMETT, called and sworn.

Examined by Mr. MacCoy:

Q. Where do you belong? A. I belong to Gloucester, Mass.

Q. You heard the statement that your captain made? A. Yes.

Q. It has been read over to you? A. Yes.

Q. You understand it? A. Yes.

Q. Are all the facts stated by the captain true, to your knowledge? A. Yes.

JOSEPH CARPENTER, called and sworn.

Examined by Mr. MacCoy:

Q. Where do you belong? A. I belong to Gloucester, Mass.

Q. You are an American citizen? A. I was born there.

Q. You have heard the statement made by the captain? A. Yes.

Q. It has been read over to you? A. Yes.

Q. Have you a personal knowledge of the facts and circumstances stated by him? A. Yes.

Q. Are they true? A. Yes.

ALFRED DEAN, called and sworn.

Examined by Mr. MacCoy:

Q. Are you an American citizen? A. Yes.

Q. Where do you belong? A. I belong to Connecticut.

Q. You are one of the crew of the *Gerring*? A. Yes.

Q. You were the cook on board of her? A. Yes.

Q. You heard the statement of the captain? A. Yes.

Q. Are you personally acquainted with all the facts and circumstances referred to by him? A. Yes.

Q. Are they true? A. Yes.

Cross-examined by Mr. Ritchie:

Q. Did you go in the boat that went to the *Haskins'* boat?
A. No.

Q. Then you did not hear the conversation that took place between the captain of the *Haskins* and the captain of the *Gerring*?
A. Yes, I did.

Q. It was so close that you could hear all that was said? A. Yes, it was close enough to hear an ordinary conversation.

Q. Who else remained on the vessel besides you when the boat went off? A. No one.

Q. Did the boat come back to your vessel before she commenced fishing? A. No, she went and set for the fish.

Q. Did anyone come on board before you caught the fish? A. No.

Q. Did you hear the captain of the *Haskins* hail the *Vigilant*?
A. Yes.

Q. Which way was the *Vigilant* going then? A. I think that she was standing to the eastward at the time on the star-board tack. I will not be sure of that.

Q. When she finally went away which way did she go? A. She stood off to the westward.

Q. Which direction did the *Aberdeen* come from? A. She came from the westward, the south and westward.

Q. So that the vessels would pass? A. Yes, they went close by one another. I suppose they could have spoken if they had wished to.

Q. Did the *Vigilant* pass the *Haskins* more than once after she was hailed? A. I cannot say.

Q. After the Captain and the men went off in the seine boat what did you do with the vessel? A. I sailed her up and down. I jogged along close to the boat.

Q. How far did you go from the *Gerring*, about half a mile? A. No, I would be perhaps 50 or 100 yards away.

Q. Did you keep outside the seine boat? A. Yes, we always calculate to keep to the windward; sometimes we go close enough to the boat to jump in, if necessary.

Q. Which way was the *Haskins'* seine set from you? A. It was between us and the shore. It was to the northward of where we set.

Q. You mean nearer inshore? A. Yes.

Q. They were not directly inshore from you? A. No.

Q. You set to the southward and eastward? A. Yes.

Q. How much to the eastward were you, do you think, of the *Haskins'* net? A. I said we were to the south; the south and east.

Q. How much to the east of the *Haskins'* seine was your seine? A. It was south.

Q. But it was further east? A. Yes.

Q. How much? A. I could not tell; I would say from 40 to 100 yards.

Q. You noticed the Gull Ledge at the time? A. I cannot say that I paid much attention to it.

Q. You noticed it? A. I noticed a ledge, but I don't know the name of it. I never was so close to that shore before fishing.

Q. The *Gerring's* seine boat rowed off to the *Haskins'* seine boat? A. Yes.

Q. Then in what direction did your boat go? A. She rowed to the southward for a school of fish that was there.

Q. Both seines were catching from the same school of fish? A. No.

Q. Were there 2 schools of fish there? A. Yes, there were a dozen of them probably.

Q. They were close together? A. They were 100 yards to a half mile from one another.

Q. What would you call it where you see a lot of schools going together? A. I would say that they were "bunching up."

Q. You saw the seine put out of the boat? A. I did.

Q. How are the ends of the seine made fast; what keeps them from sinking? A. We have cork buoys on them.

Q. On each end, or straight along?

Q. The bag of the seine makes out from that further inshore? A. No. It forms a circle in the water with both ends in the boat.

Q. This was a purse seine that you were using? A. Yes.

Q. How, when you come to haul your seine up, to get the fish out, so as to put them on the schooner, it is closer inshore than when the seine is first set? A. No.

Q. How far do you say the seine of the *Gerring* was set from the shore? A. I judge that it was set very nearly four miles off.

Q. What shore are you referring to? A. I am referring to any that was visible to the naked eye.

Q. You don't count Gull Ledge? A. Yes, I do. I say any land visible.

Q. Tell me, what was the nearest land? A. I could not tell you. I don't know the name of it.

Q. Can you indicate it on this chart? A. No.

Q. What was the nature of the land you saw? A. Some of it was low, and some of it was high.

Q. When you refer to what was four miles away, do you refer to this ledge? A. I mean land; any land that I saw.

Q. Was it a straight coast line or a ledge of rock? A. I saw an island off there.

Q. What was the nature of the land that you spoke of as being four miles off? A. It is impossible for me to say without being on it.

Q. Give me the best description you can; you can tell whether it was an island or the main land? A. I said I saw a rock.

Q. Is that what you spoke of as being four miles off? A. Yes, I judge that it was three and a half to four miles. I don't say what it was for I have not been on it.

Q. How much closer in than that did you take the schooner? A. I took her no closer; I had instructions from the captain to keep to windward of the boat.

Q. Did the seine change its position after it was first set? A. No, not to my knowledge.

Q. There was quite a swell on, was there not? A. Yes.

Q. That swell would naturally drift the schooner inshore if you did not keep her off? A. No, I don't see why it should. The wind would have a tendency to drive her off.

Q. What would be the effect of the swell on the seine? A. I don't think that it would have any effect.

Q. If there is a heavy swell it would wash it in? A. No, I don't think so. I have been fishing a good many years.

Q. About how long after the *Vigilant* said that she was on the line was it that the net was set? A. Probably it would be 10 to 20 minutes. It may have been half an hour. I did not keep any time.

Q. Are you sure that the *Vigilant* came back after the seine was set? A. Yes.

Q. Was she in sight when you were taking the fish out? A. Yes, we had at least half out when she was close alongside. She was within hailing distance.

Q. She passed you, did she? A. Yes, she passed inshore to leeward of us.

Monday, June 1st.

Before Mr. Des Barres, Deputy Registrar.

Present:

Mr. Ritchie, Q. C., for Plaintiff.

Mr. MacCoy, Q. C., for Defendant.

LEANDER GAUDET, recalled.

Cross-examination by Mr. Ritchie, continued.

Q. How many boats were engaged in setting and drawing the seine? A. One boat.

Q. Did you go in a boat from the *Gerring* to the *Haskins*? A. Yes.

Q. Was the *Haskins'* seine set then? A. No.

Q. Which seine was set first, the *Haskins'* or the *Gerring's*? A. The *Haskins* set their seine first.

Q. Was the *Haskins'* seine drawn before the *Gerring's* seine was set? A. No, the *Haskins'* seine was not drawn before the *Gerring's* seine was set; they commenced to set their seine before the *Gerring*.

Q. In what state of progress was the *Gerring's* seine at the time the *Haskins* went away. A. They were bailing out their fish.

Q. Where was the *Haskins* when the captain of the *Aberdeen* went on board the *Gerring*? A. It had gone.

Q. How long? A. Nearly an hour.

Q. How far was the *Haskins'* seine set from the *Gerring's* seine? A. I believe about seventy-five yards.

Q. In what direction was the *Haskins'* seine set, east or west of the *Haskins*? A. Inshore, the *Haskins'* seine was set inshore from the *Gerring's*.

Q. How far was the *Gerring's* seine set from the shore? A. Between three or four miles, I believe, I am not sure.

Q. What was the nearest land? A. I do not know; I do not know the coast.

Q. Where was the *Vigilant* when the *Haskins* men began to take fish out of the net? A. It was going up and down the line.

Q. Are you prepared to say that the *Vigilant* passed after they began to bail their fish out? A. It passed going to the west.

Q. Did it pass more than once while they were bailing? A. Yes, it passed once or twice, then going to the west, after they commenced bailing the fish.

Q. How close did it pass? A. Between 150 and 200 yards.

Q. How close did it pass to the *Gerring's* boat? A. 150 to 200 yards.

Q. How do you know that the *Vigilant* was keeping on the line? A. Because the captain of the *Vigilant* said to Captain Hardy that they were keeping on the line.

Q. Did you hear this said by the captain of the *Vigilant*? A. Yes, I heard it myself.

Q. Where were you when the captain of the *Vigilant* said he was on the line? A. I was on deck.

Q. How close was the *Gerring* to the *Vigilant*, at that time? A. Between 150 and 200 yards.

Q. Was the seine set inside of where the *Gerring* then was? A. Just about the same spot that the *Gerring* was then.

Q. Did the *Gerring's* boat have any assistance from the schooner in drawing the seine? A. The people in the boat took in the net themselves.

Q. Did the people in the boat take in both lines themselves? A. Yes.

Q. Were the fish all bailed out of the net when Captain Knowlton came on board? A. No, they had not finished when Captain Knowlton came on board.

Q. Was the net on the shore side of the vessel or on the off shore side? A. The net was on the outside of the schooner, on the south side.

Q. Was there any conversation between the captain or crew of the *Gerring* and the captain or crew of the *Vigilant*? A. No.

Q. How near was the place where they were bailing the fish out to the shore? A. A little less than four miles I should say; between three and four miles.

Q. Was the place where you were bailing the fish outside of the place where the *Gerring* was when the *Vigilant* said that she was on the line? A. I cannot say for sure, I think it was a little outside.

Q. How long after the captain of the *Vigilant* said she was about on the line was it that the *Gerring's* seine was set? A. I cannot say exactly.

Q. Would it be an hour or ten minutes? A. About ten or twenty minutes.

Q. Are you prepared to say that it was not an hour? A. I cannot say for sure, I do not think it was an hour, but would not say positively.

Q. How far was the *Haskins'* seine set from the shore? A. Between three and four miles, I think.

Q. How long before the captain of the *Aberdeen* came on board did the *Aberdeen* come in sight? A. I was working, I did not look, I cannot say.

Q. Did the *Aberdeen* stand by for a long while before the captain came on board? A. No, not long.

Q. How long? A. Right off, he came on board.

Q. Where was the *Vigilant* when the captain of the *Aberdeen* came on board? A. He had run off to the west.

Q. How far away was he then? A. A mile or two I would think.

Q. How long was it from the time the seine was put out till the time the *Aberdeen* came in sight? A. I do not know, I was working at the fish.

Q. Give some notion of how long? A. It might be three-quarters of an hour.

Q. How long were you taking the fish out after the *Aberdeen* came alongside? A. I cannot say exactly, I should think half an hour or so; it might be an hour after the *Aberdeen* came alongside.

Q. How far away was the *Haskins* at the time the *Aberdeen* came alongside? A. I cannot say.

Q. Was she further away than the *Vigilant*? A. She had stood out to sea, I cannot say the distance.

Q. You cannot tell me which was the furthest away when the *Aberdeen* came alongside, the *Haskins* or the *Vigilant*? A. I cannot say.

Q. The *Vigilant* may have been just as far away as the *Haskins*? A. Perhaps so and perhaps not, I do not know.

Re-examined by Mr. MacCoy:

Q. Did you hear your captain propose to the captain of the *Aberdeen* to tow the log on shore to measure the distance? A. Yes.

Q. Did the captain of the *Aberdeen* assent or refuse? A. He refused.

Q. Were you present when the captain of the *Gerring* proposed to the captain of the *Aberdeen* to take the *Aberdeen's* or the *Gerring's* boat and the logs of either or both vessels, and tow them ashore to ascertain the distance? A. Yes, I was present.

Q. Did the captain of the *Aberdeen* assent or refuse? A. He refused.

Q. Were you present when the captain of the *Aberdeen* asked the captain of the *Gerring* for his compass? A. Yes, I was present.

Q. Where was the compass? A. It was below.

Q. In the binnacle? A. Down in the binnacle.

Q. Were you present when the captain of the *Aberdeen* asked the captain of the *Gerring* for his chart? A. Yes.

Q. Were you present when the captain of the *Aberdeen* threw it down and told the captain of the *Gerring* it was no good? A. Yes, I was. The captain of the *Aberdeen* threw it down saying that it was no good.

(Objected by Mr. Ritchie that this is not re-examination.)

Mr. MacCoy:

Q. Were you on deck when the captain of the *Aberdeen* was in your boat and the captain of the *Gerring* said he would tow his own log in order to ascertain the distance? A. Yes.

Q. What answer did the captain of the *Aberdeen* make? A. He said it was not worth the trouble, it was no use to take the trouble.

Q. Did you hear the captain of the *Gerring* say that when the *Gerring* got under way he would put the log overboard? A. Yes.

Q. What did the captain of the *Aberdeen* say to that; did he give any instructions to anybody? A. He said he would not allow it.

Q. Have you any idea what hour it was that the *Gerring* was seized? A. I cannot say exactly, I think it was between five and six o'clock in the evening.

Q. Were you there when the captain of the *Gerring* asked the captain of the *Aberdeen* to go up to the *Vigilant* and ascertain from her whether the instructions he had given that they were outside the three-mile limit were correct? A. Yes.

Q. What was the captain of the *Aberdeen's* answer? A. He would not bother about it, it was not worth the trouble.

Re-cross-examined by Mr. Ritchie:

Q. Did you see a patent log on board the *Gerring*? A. I do not know what a patent log is; I saw a log.

Q. What do you mean by a log? A. A little thing that moves round to tell the distance.

IN THE EXCHEQUER COURT OF CANADA.
NOVA SCOTIA ADMIRALTY DISTRICT.

No. 73.

THE QUEEN, Plaintiff,
Against
THE SHIP *Frederick Gerring, Jr.*, Defendant.

Before the Hon. James Macdonald, Judge of the Court, at Halifax, June 29th, 1896.

Appearances:

W. B. A. Ritchie, Q. C., for Plaintiff.

W. F. MacCoy, Q. C., for Defendant.

CAPT. CHARLES KNOWLTON, called and sworn:

Examined by Mr. Ritchie:

Q. You have been engaged in the fishery protection service of Canada? A. I have.

Q. For how many years have you been so engaged? A. This is my tenth season.

Q. You are in command of the steamer *Aberdeen* engaged in the fishery protection service? A. I am.

Q. You have been in command of her how long? A. For over a year and a half.

Q. Since you have been employed in the fishery protection service, you have been acting as a justice of the peace and fishery officer in connection with that service? A. I have.

Q. How many years' experience have you had as a master mariner, Capt. Knowlton? A. I have had 21 or 22 years' experience.

Q. You seized the vessel in question in this case, the *Fredrick Gerring, Jr.*? A. I did.

Q. On what date? A. On the 25th day of May past.

Q. Where was the place that you seized her? A. It was in the vicinity of—well, it was close to the island called Gull Ledge, in the vicinity of Liscombe, I suppose you would call it, or Mary Joseph, off the coast of Guysboro' county.

Q. Now, on that date, the 25th May, prior to this seizure, whereabouts had you been cruising? A. I had been cruising from the vicinity of Sambro to the place of seizure.

Q. You left Sambro in the morning? A. No, I left Meagher's beach in the morning.

Q. That is near Halifax? A. Yes.

Q. You went how far east? A. We went as far east, I think, as Pope's Harbor.

Q. Is that in the vicinity of Liscombe? A. No.

Q. Where is that? A. It is in Halifax County.

Q. Then you went back towards Sambro? A. Yes.

Q. And on the afternoon of the 25th you went to the place of seizure? A. Yes. I went in a direct course, pretty near.

Q. Tell us what time it was that day that you first saw the *Frederick Gerring, Jr.*? A. It would be between 5 and 6 o'clock, I should say.

Q. That you first saw her? A. Yes, it was near 6 o'clock, I think.

Q. Tell us, when you first saw her, what her position was? A. She was lying with her head sails down, and her foresail and main sail set with the boom off to starboard. She was lying with her head off shore. The fore and main boom were over the starboard side. The sheets were off. She was lying as vessels usually lie to bail in fish out of the seine.

Q. When you first saw her, could you see what she was doing? A. I could not see, but I could judge from past experience.

Q. What did you do? A. I proceeded towards her, and took bearings as I went along.

Q. When you got to where you could see what she was doing, what did you see? A. I saw that she was bailing mackerel from her seine.

Q. Mackerel was being bailed from the seine on to the schooner's deck? A. Yes, with a dip net.

Q. Did you take bearings of the place where you saw the crew of this vessel bailing fish from the seine on board the vessel? A. Yes.

Q. Did you take the bearings at the time she was engaged in the operation? A. I did.

Q. What time in the afternoon would that be? A. I think that would be about 6 o'clock. It would be near that time, but I would not say just exactly.

Q. Will you give us those bearings? A. The northwest point of White Island, that is Big White Island, bore W. N. W., and Liscombe Light bore N. E. half N.

Q. How far was this place where she was bailing the fish out of the seine into the schooner from the coast of Nova Scotia? That is, from the nearest coast? A. It was less than a mile and three quarters.

Q. What was the nearest portion of the coast? A. It was Gull Ledge, according to the chart. (Chart marked J. Mc. D.)

Q. This chart, marked J. Mc. D., was the chart that you had on the *Aberdeen*? A. Yes.

Q. It is the Admiralty chart of the shore of Nova Scotia, in the vicinity of which this seizure was made? (Objected to.) A. Yes.

Q. What kind of a chart is it? A. It is the Admiralty chart of the shore of Nova Scotia.

Q. How long have you had this chart on the *Aberdeen*? A. It was put aboard the *Aberdeen* about a year ago.

Q. Have you sailed by this chart around the coast anywhere in the vicinity of Gull Ledge? A. Not on that chart, but on a chart of exactly the same survey. I have sailed all through the islands at Marie Joseph, and down between the two White Islands.

Q. You have sailed all through the islands off of Gull Ledge with a similar chart? A. I have.

Q. And what did you find in regard to the correctness of that chart? A. I found it perfectly correct. We never found any shoals that are not marked there.

Q. Can you indicate on this chart the place where you saw the crew of the *Frederick Gerring, Jr.*, taking the fish out of the seine, and putting them on the schooner? A. It was just where this is marked.

Q. What is marked at the place you refer to; what words are marked on the chart at the place you say this took place? A. The words *Frederick Gerring*.

Q. They are marked at the place where you saw those fish being taken? A. Yes.

Q. And what are the lines drawn from that point marked *Frederick Gerring*; what do they indicate? A. They indicate the cross-bearings that I have spoken of.

Q. After you had taken the bearings what did you do? A. I boarded the schooner *Frederick Gerring, Jr.*

Q. What took place after you boarded her? A. I told the master that he was fishing within the three-mile limit.

Q. You then seized her, did you? A. I then seized her.

Q. Did the captain give you his papers? A. He did.

Q. Look at those papers and say what they are? A. These are the papers that he gave me. (Marked J. Mc. D. a.)

Q. Give me as near as you can the hour that you made the seizure. A. I think it was about half-past six. It was between half-past six and seven in the evening.

Q. At the time of the seizure was the cruiser *Vigilant* in sight? A. She was.

Q. How far away was she? A. I judge that she was a mile or a mile and a half away.

Q. What was she doing? A. She was standing off shore. I am not positive that she had steering way on, though I think she had. There was a very light draft of wind at the time.

Q. At the time of the seizure can you tell us how the tide was? A. It was rising. I think it was somewhere about half tide.

Q. You say that there was very little wind? A. Yes very little.

Q. What was the direction of the wind? A. I think it was E. to E. S. E.

Q. How had it been in the afternoon? A. I think it was more southerly during the day, but I am not positive.

Q. How long had it been E. S. E.? A. For an hour before that, if there was any wind I don't know that you can tell where it was. Under steam you get a draft ahead even when the wind is very light, so I can hardly say how it was.

Q. Have you had much experience on the coast of Nova Scotia in that vicinity? A. I have had experience for the last ten years.

Q. I want you to tell me your judgment as to the trend of the current at that time; that is to say, a vessel lying off that coast, where this vessel was, assuming that she had been lying there for some hours, which way would the tide or current or wind or whatever it was take her? A. It would be apt to send her to the westward slightly.

Q. Would that take her nearer to the shore or further away from it? A. It would take her nearer the shore; if she set east of that it would drift her towards the ledge.

Q. You say, assuming this vessel had set east of the ledge, or where you found her, the current would drift her towards the ledge? A. Yes. That is, unless she was on a parallel line outside of it.

Q. What would your judgment be from your knowledge of the currents on that coast as to whether that vessel, the *Frederick Gerring, Jr.*, had set her net in the same place where you saw her taking the fish out of it, or had she set it further away from Gull Ledge? A. I could hardly say concerning that.

Q. I am asking your judgment? A. She would be apt to set to the westward if there was no wind.

Q. The question I asked was whether in your judgment, from the trend of the current, you would say that the seine had been set further away from Gull Ledge than it was at the time the fish were being taken out of it? A. Well, I think it would slightly.

Q. How do you account for that drift which you say a vessel would have there? A. There is an Arctic current that sets along the coast in the first part of the season. It is considered to follow the coast up during an east wind.

Q. The course of the current would set the vessel in? A. It would set her along the coast.

Q. How was the wind after this? A. It was an easterly wind.

(*The Court:* How was the wind at the time of the seizure? A. It was E. to E. S. E.)

Q. The next day there was a strong easterly wind? A. Yes, quite a strong east wind.

Q. At the time of the seizure of this schooner were there any other fishing vessels near by? A. I don't know that there were any very near.

Q. What would be the nearest? A. The nearest would be a mile away, or perhaps more.

Q. At the time of the seizure did you see the *Gerring's* compass? A. I did.

Q. How did that compass agree with yours? A. Very well. It gave the same bearings.

Q. As the one by which you took the bearings? A. Yes.

Q. Will you give us the conversation that you had with the captain of the *Gerring* with regard to the chart? A. When I took the bearings I said to him, "if you will give me your chart I will show you where it is." He said that he had an old one and that it was not any good. He brought it up and I said "Captain, you are right, it is not any good," and I laid it down.

Q. Tell us what conversation you had in regard to the question of towing his log? A. He asked me whether I would have any objections to my officer running in with the steamer to Liscombe Light to see what distance it was. I said that I would not do that because Liscombe Light had nothing to do with the case. He would have to navigate pretty carefully to get in there in a direct course over the ledges. That was all that was said about the log.

Q. Was anything said about towing the log, or measuring the distance to Gull Ledge? A. I don't think there was. I don't remember anything of that kind being said.

Q. Did the captain of the *Gerring* ask you to tow any log to Gull Ledge? A. No.

Q. Did the captain of the *Gerring* ask you to allow him to tow his log to Liscombe Light? A. Not to my recollection; I don't remember any such thing whatever.

Q. Did you give orders that the captain of the *Gerring* was not to be allowed to tow his log behind him going to Liscombe Light? A. No, I did not.

Q. Did the captain of the *Gerring* ask you to speak to the captain of the *Vigilant* in regard to his position? A. I don't remember of it. I don't think he did.

Q. Will you tell us what conversation you had with the captain of the *Gerring* in regard to his position? A. We did not have very much. I said "you are too close to this ledge," and he said if it was a matter of ledges there were lots of them fishing inside of Sambro on Sunday. I was in a position to know differently from that.

Q. When you were speaking of the ledge you referred to Gull Ledge? A. Yes.

Q. Did the captain of the *Gerring* claim or say that he was more than three miles from Gull Ledge? A. He did not.

Q. Did you at any time on that day, or at any other time tell the captain of the *Gerring* that at the time of the seizure the tide was running S. W.? A. No, I did not.

Q. Did you take soundings at the place where the *Gerring* was taking her fish on board? A. Yes.

Q. What depth of water was there there? A. There were 28 fathom.

Q. After you arrested the *Gerring* what did you do? A. I put the second officer with 4 or 5 men on board. I waited until she took her fish on the deck, and then took her in tow.

Q. Where to? A. To Liscombe.

Q. What did you do the following day? A. I took her to Halifax after she got her fish dressed and below.

Q. What took place after she was brought to Halifax? A. We brought her to the wharf and I reported to Commodore Spain.

Q. She was arrested in this action? A. Yes.

Q. When you were coming from Liscombe to Halifax on the 26th May with the *Gerring* in tow, how close did you pass to Gull Ledge? A. I think we came within a mile and a half of it.

Q. On that day when you came past Gull Ledge was the sea breaking over it? A. It may have been breaking over the low parts of it.

Q. Was it breaking over the high parts of it? A. It was not.

Q. Perhaps you will give us an idea of the length, breadth and height of it? A. I never was ashore on the island but I judge that it is a quarter of a mile long, in the vicinity of an eighth of a mile wide, and thirty feet high.

Q. Did you observe when you were passing there on the 26th May whether there was any vegetation there? A. I could see something green on it that looked like vegetation.

Cross-examined by Mr. MacCoy:

Q. How many seizures have you made? A. I have made two seizures besides this one, for violations of the fisheries act.

Q. Were they subsequently released, and given up? A. I understand that they were released on payment of fines.

Q. Were they not released because you made a mistake? A. No, they were not released because I made a mistake.

Q. What time was it that you got to where the *Gerring* was; did you haul up before you got to the *Gerring*? A. What do you mean by "hauling up"?

Q. Did you stop the engines? A. I stopped the engines when I got there.

Q. Then you had not taken bearings before? A. I had.

Q. You can take bearings, can you, when under full steam? A. Yes.

Q. How were you, yourself, heading when you took the first bearings? Were you taking your own bearings, or the bearings of the *Gerring*? A. I was taking my own bearings before I came to the *Gerring*.

Q. How far were you from the *Gerring*? A. I don't know that I can tell you exactly; perhaps a mile to the S. W. of her.

Q. It is more difficult to judge distances on the water than it is on land, is it not? A. It is quite difficult. Some can and some cannot.

Q. It depends upon the man? A. And upon the eye.

Q. You were about a mile from the *Gerring* when you took your own bearings? A. I think so.

Q. You were not particular about that? A. I noticed sufficiently to judge that she was inside.

Q. Did you take particular notice of the distance that you were from the *Gerring* when you first took your own bearings? A. No.

Q. Would you tell me what course you were steering? A. We were steering down about N. E.

Q. I don't want to know "about" the course you were steering; will you say that you were steering the course you mentioned? A. I think I was steering about N. E. I was east going down towards her, and then I changed my course when I got about a mile from her. Then I steered N. E., until I got to her.

Q. How was the *Gerring* heading? A. I judge that she was heading about S. S. W. I would judge so.

Q. Would she be heading off shore? A. Yes.

Q. In what direction, in your judgment, was the tide at that particular place? A. I think the tide would probably be westerly.

Q. That is off shore? A. It would be along the line of the shore.

Q. That is, carrying her westerly? A. Yes.

Q. Was there any tide there that had any tendency to carry her inshore? A. There is only one tide that I am aware of.

Q. Would that carry her closer to the shore? A. It would depend upon her position.

Q. Where you found her, would the then tide have any tendency to carry her closer to the shore? A. I am not aware that it would.

Q. Will you say that it would not? A. No, because I don't know exactly.

Q. Where you found the *Gerring* when you came alongside, I understand you to say that you were not sufficiently acquainted with the tide to say whether it would carry her inshore or offshore? A. It will carry her to the westward; you can look at the chart and see whether it would carry her to the shore or not.

Q. I am asking you? A. If you will let me look at the chart I will tell you.

Q. You cannot tell except by looking at the chart? A. No.

Q. What is the nearest headland according to this chart? A. Liscombe Point would be the nearest headland.

Q. Would you tell me how far from where you found her taking fish it was to Liscombe Point? A. I think it was about 6 miles, speaking from memory.

Q. You have spoken of Gull Ledge? A. Yes.

Q. This ledge, how far from the main land is it? A. I would have to measure. (After examining chart.) It is more than three miles from any main land.

Q. I want you to tell me whether this place marked "Gull Ledge" on this chart is not a portion of a sunken ledge? A. No, it is not.

Q. Do you say that at high tide no portion of it is covered? A. No part of it is covered, except in the usual way, by the ebb and flow of the tide.

Q. Does any portion of it disappear at the highest tides? A. I don't think the biggest portion of it is covered. I suppose the lower parts of it are covered.

Q. How did you take the bearings? A. I took the bearings by the ship's compass.

Q. You took the bearings of Liscombe Point and judged your distance from it? A. No, I did not; I took another bearing of White Island.

Q. Is that to the westward? A. It is W. N. W.

Q. Was it Little White Island? A. We call it Big White Island.

Q. You took your bearings from there and also from Liscombe Point? A. No, from there and from Liscombe Lighthouse.

Q. How did you ascertain the exact position? A. By the bearings.

Q. I suppose the slightest variation would make a considerable difference? A. It would make some difference.

Q. Will you say that you got the exact course of your ship? A. Yes.

Q. While you were under way? A. We were lying quiet then.

Q. Will you say that the distance or bearings were exactly as you gave them? A. Yes.

Q. Who took the bearings? A. My chief officer took them about the same time.

Q. Then did you take the chart? A. Yes, I laid it on the chart.

Q. On your own chart, on board your own ship, before the seizure? A. Yes.

Q. And this is what you put down at that particular time? A. These are the bearings.

Q. When did you put these marks in red ink on this chart? A. I did not do that.

Q. Who did it? A. Commodore Spain did it.

Q. If you notice there, there are two pencil marks partly rubbed out (marked J. M. D., b., and J. M. D., c.), what are they? A. They are probably bearings that I took as I came down.

Q. Did you put these marks there? A. I did.

Q. What was this one? A. This was another as I was running down.

Q. When was the cross bearing J. M. D., c., made? A. I cannot say exactly; it was made that day.

Q. Was it when you were testing your bearings? A. Probably it was. I was taking the bearings as I was running down.

Q. Were you under way when you took the bearings marked J. M. D., c.? A. I suppose I was.

Q. Then the lines J. M. D., b., and J. M. D., c., were both taken while you were under way? A. Yes.

Q. You were then taking bearings to ascertain whether the *Gerring* was inside the three-mile limit or not? A. Yes.

Q. Would that cross section b, be more favorable to the *Gerring*, or against her; would it show that she was further to the

east? A. Yes, it would show that she was to the east of the line when I took that bearing. It would show that we were that much to the west of the *Gerring*. It would not have anything to do with the *Gerring*.

Q. The *Gerring* would be to the east of you? A. Yes.

Q. If that line was correct it would show that she was further to the east than the place you now put her? A. Yes.

Q. If the line b was correct it would show that the *Gerring* was further to the east? A. It would not change the position of the *Gerring* at all.

Q. Now when you came to the cross section on the chart, you measured from there to Gull Ledge? A. Yes.

Q. What was the distance by your measurement? A. I think it was a little over a mile and a half.

Q. Would you say that it was not two miles? A. Yes, it was not two miles.

Q. Have you no memoranda made at the time? (Mr. Ritchie proposes to hand memoranda to witness.)

Q. At the time you made this seizure you had taken the cross sections on your own ship before you made the seizure? A. Yes.

Q. Did you make this report then or afterwards? (Referring to paper produced by Mr. Ritchie.) A. I made it afterwards.

Q. When? A. I think it was the next day.

(*The Court*: That is not a memorandum made at the time.)

Q. What was the distance from where the *Gerring* was to Gull Ledge? A. It was a mile and five-eighths of a mile as near as I can make it. The distance from Gull Ledge to the nearest point of Barron Island I think is less than a mile and a half.

Q. There is one part of Gull Ledge that is about 30 feet high? A. Yes.

(*The Court*: What is the course from Gull Ledge to Barron Island? A. It is nearly north.)

Q. From where the *Gerring* was to Barron Island, what would the distance be? A. (After making measurements on chart.) It is exactly on the three miles.

Q. Gull Ledge is just a ledge in the sea? A. I would rather call it an island.

Q. The sea does wash over it, does it not? A. It sprays over it in storms, no doubt.

Q. Will you say that the sea never washes over it? A. I could not say whether it does or not; I was never there when there was a heavy sea.

Q. It is a usual practice, is it not, for vessels engaged in the fishery protection service to sail up and down the line? A. I don't think that we are commissioned for that purpose.

Q. Is it not a usual practice to sail up and down the line, and to show people where they are? A. I don't think it is the general practice.

Q. Have you never done it? A. I have in times past. They have asked my position and I have told them, but I think I exceeded my duty in doing so.

Q. The *Vigilant* had been there that afternoon? A. Yes.

Q. When did you first see her that afternoon? A. I first noticed her shortly after I noticed this vessel.

Q. How far was she from the *Gerring* at the time? A. She was a mile or more away.

Q. Was she inside or outside? A. She was outside to the S. W.

Q. The *Gerring* could not have moved much inshore from the time you saw her? A. I would not think so.

Q. She would move hardly any? A. Not if there was any wind.

Q. Was there wind enough to keep her in position? A. There was hardly any.

Q. Did you not think it strange that the *Vigilant* did not seize her? A. It come into my mind that he was trying to get to her. I supposed he was going to tack.

Q. Which way was he heading? A. He was heading to the south.

Q. He passed her, did he not? A. I don't know.

Q. Must he not have done so? A. I don't know.

Q. Where did you meet him? A. I met him to the S. W. of the *Gerring*.

Q. He was standing towards you? A. He was going to the southward and westward.

Q. You thought it strange that he did not seize her? A. I thought that he had little wind, and that the schooner had just set, and that he would come around and go down.

Q. After the nets are set for the school the ends are brought together and they bail out the fish? A. Yes.

Q. The nets are not anchored, or the ship? A. No.

Q. Do you know of your own knowledge whether the net was set to the south or east of the *Gerring*? A. I don't know where it had been set.

Q. Was the net to the south of the vessel or inshore? A. She was lying with her head to the south and the net was on the port side. That would be to the east of her.

Q. When you told him that he was fishing within the three-mile limit, at the time did you see any other vessel there getting under way? A. No. I saw a vessel to the westward of us.

Q. Was she under way? A. Yes.

Q. She was going to the westward? A. She was offshore.

Q. You said that his chart was no good,—why? A. It was old and very much defaced, and on a small scale. He pronounced it no good himself.

Q. Have you had experience with American charts? A. Yes.

Q. Have you found them correct? A. Yes, they have some good charts, but the material is not so good as the British.

Q. There was a dispute between the captain of the *Gerring* and yourself as to whether he was fishing within the three-mile limit; he claimed that he was not? A. No, I don't think so.

Q. Did he not claim that the *Vigilant* was going up and down the line? A. He did.

Q. Did he not say that the captain of the *Haskins* asked the captain of the *Vigilant* if they were outside? A. He told me that he spoke the *Vigilant* himself.

Q. Did he not say that he heard the captain of the *Vigilant* tell the captain of the *Haskins* that he was outside? A. I don't think so.

Q. Did he tell you that the captain of the *Vigilant* told him that he was all right? A. Yes.

Q. Did he say that he was outside the *Vigilant* when he set? A. No, he said that he set the net after speaking the *Vigilant*.

Q. Did he not ask you to run up to the *Vigilant* and ascertain whether that was correct or not? A. No, he did not.

Q. What did he say? A. I don't just remember; he said the *Vigilant* told him that he was all right.

Q. Was there any dispute between you as to his location? A. No, the question he said was that he was not within three miles of the mainland.

Q. You claimed Gull Rock as the land you were going by, and he claimed something else? A. Yes.

Q. Did he not ask you to run to the *Vigilant* to ascertain the instructions received from the *Vigilant*? A. I don't remember.

Q. Will you say that he did not? A. Well, I don't think he did. Many things may have passed that have escaped my memory, but to the best of my recollection he did not.

Q. You say that the wind was southerly during the day? A. I think it was.

Q. At five o'clock in the afternoon where were you? A. We were running along the coast.

Q. Off of what point would you be? A. I think that at half-past four we would be off of Beaver Island. I am not just sure.

Q. Would you say that the wind would be in the same direction off of Beaver Island at half-past four o'clock that it would be where the *Gerring* was? A. No, I could not say, but I judge that it would not be much different.

Q. Do the currents change off where the *Gerring* was with different seasons? A. In the spring it runs to the westward.

Q. How would it be on the 25th May? A. It would be weaker.

Q. It is the Arctic current you say, that causes the current to the west? A. The Arctic current and the flood tide.

Q. It was not flood tide then? A. It was about half tide.

Q. When did you take the soundings? A. Just after I seized the *Gerring*.

Q. How long after? A. It would not be ten minutes.

Q. It would have been easy for you to ascertain the exact distance from Gull Rock by taking the log out? A. You cannot always depend upon the log.

Q. Can you tell with certainty by the cross bearings? A. You can if the compasses are correct.

Q. Are your compasses correct? A. Yes.

Q. How do you know? A. I have worked time azimuths.

Q. When you took the schooner in tow to Liscombe, did you keep close to the light? A. We went on an angle.

Q. Then you would have no difficulty, if you put out your log, in measuring the distance to Liscombe? A. No.

Q. You did not do that? A. No.

Q. That might or might not correspond with your cross section? A. It could not affect the cross section much.

Q. Would not the measurement by the log be more accurate than the cross section? A. No.

Q. What is the nearest headland to the westward? A. I suppose it would be Taylor's Head. That is to the westward of Sheep Harbor.

(*The Court:* How far is that from Liscombe Light? A. I should say it is about 20 miles.)

Q. Would it not be more than that? A. It might be. (After making measurements on chart). It is 25 miles from where the *Gerring* was.

Q. It would be 30 miles from headland to headland in a straight line? A. It is 27 miles from headland to headland in a straight line from Liscombe Point to Taylor's Head.

Q. Are you sure that you did not tell them that the tide was running to the S. W.? A. I am, so far as my memory tells me.

Q. When did you look at your compass last before going to the *Gerring*? A. I suppose it would be five to seven minutes.

Q. After that you took your crew and went on board. Did you look at the compass when you went on board? A. Yes.

Q. Did you notice your compass before? A. I did, 5 or 7 minutes before.

Q. Had you come to anchor? A. No.

Q. Did you take a memorandum of the courses on board? A. I spoke from memory.

Re-examined by Mr. Ritchie:

Q. You told Mr. MacCoy that Gull Ledge is one and a half miles from Barron Island; will you give me some notion of the size of the island? A. It is a mile long and a mile wide, or something more.

Q. Between Gull Ledge and Barren Island there is a ledge, and some rocks? A. Yes, there is a ledge, and also some sunken rock.

Q. What is the depth of the water between Gull Ledge and Barren Island? A. It varies from four to fourteen fathoms.

Q. How far is Barren Island from the main coast of Nova Scotia? A. I don't know that I have measured it; it is more than a mile. (After measuring on chart.) It is less than a mile and a quarter to the nearest land, marked "English Church."

Q. Between Barren Island and the Church point, what is the condition of the water? A. There are 3 to 6 fathoms of water. It is broken water; there are some shoals between.

Q. The bearings that Mr. MacCoy asked you about, which have been rubbed out on this chart, are merely the bearings you took while you were approaching the *Gerring*, before you got to her? A. Yes.

Q. And they do not indicate anything but the position of your vessel at the time you took them? A. No.

CAPT. ARTHUR MORIN, called and sworn.

Examined by Mr. Ritchie:

Q. You are the 1st Officer on board of the Dominion cruiser *Aberdeen*? A. Yes.

Q. Do you hold a captain's certificate? A. Yes.

Q. How long have you been a master mariner? A. Since 1865.

Q. How long have you been engaged in the fisheries protection service? A. For 5 or 6 summers.

Q. Were you on board the *Aberdeen* at the time the *Gerring* was seized? A. Yes.

Q. Do you remember the date? A. It was the 25th May last.

Q. What was the hour that the captain of the *Aberdeen* went on board of the *Gerring*? A. It was between 6 and 7 o'clock in the evening.

Q. How near did the *Aberdeen* come to the *Gerring* before the captain went on board? A. Well, about a cable length, I suppose, or a cable length and a half.

Q. When the *Aberdeen* came within a cable length of the *Gerring*, what was being done on the *Gerring*? A. They were bailing fish from a net into the schooner.

Q. And the *Aberdeen* lay to within a cable length? A. Yes.

Q. After you lay to, what did the captain of the *Aberdeen* do? A. He took the bearings.

Q. What did he do afterwards? A. He ordered me to get the boat and the crew ready.

Q. Had you anything to do in regard to taking the bearings? A. The captain called me on the bridge and asked me to ascertain by the compass the bearings of Liscombe Light.

Q. Did you take the bearings of Liscombe Light? A. I did.

Q. How was it bearing? A. It was bearing N. E. $\frac{1}{2}$ N.

Q. What did he say then? A. He said to take the bearings of Big White Island and I did so. It was bearing W. N. W.: that is, the N. W. part of the island.

Q. What did you do after you took the bearings? A. The captain said that she was inside the limit.

Q. Did you consult the chart? A. Yes, I went down with the captain and consulted the chart, and we found that she was inside.

Q. You went down and laid off the bearings on this chart marked "J. M. D.?" A. Yes.

Q. What do you say about these lines marked "W. N. W." and "N. E. $\frac{1}{2}$ N.?" A. These are the bearings of the *Gerring* that we took.

Q. You were within a cable length of her when you took these bearings? A. Yes.

Q. After you had taken these bearings, and consulted the chart, what did the captain do? A. He said that she was inside, and that we would go and seize her. He ordered the boat got ready and I did it, and he took the boat and went on board of the *Gerring*.

Q. You measured the depth of water at the place where the *Gerring* was seized? A. I did.

Q. What depth of water was there there? A. There were 29 fathoms.

Cross-examined by Mr. MacCoy:

Q. Did you take the chart or did the captain? I mean, did you lay down the lines on the chart? A. No, I did not do that.

Q. Who laid it down on the chart? A. The captain did that. I laid the scale and measured it, after he laid it down on the chart. I did not make a mark on the chart myself.

Q. You did not go on the boat? A. No.

Q. You did not go on board the *Gerring* at all? A. No.

LEVI WHITMAN, called and sworn.

Examined by Mr. Ritchie:

Q. You are 3rd Officer on board the Dominion Cruiser *Aberdeen*? A. Yes.

Q. Do you hold a master's certificate? A. I hold a coasting master's certificate.

Q. How many years' experience have you had on the coast of Nova Scotia? A. I have been off and on the coast, but not much of late years. In former years I had a good deal of experience.

Q. Where were you at the time the *Gerring* was seized? A. I was on board of the *Aberdeen*.

Q. From that place where the *Gerring* was seized can Gull Ledge be seen distinctly? A. Yes.

Q. Would you describe the appearance of the island called Gull Ledge? A. It has the appearance of an ordinary small island.

Q. Which portion of it is highest? A. I think the western portion of it is highest.

Q. And how does it slope? A. It slopes down the same as any other island would slope to the water.

Q. Does it slope from the west, or is there any other high part? A. Towards the east end, there is high land.

Q. Then it slopes to the sea? A. Yes.

Q. Have you seen it on other occasions? A. I have, but not to mark it so distinctly.

Q. What would you judge the height of the highest part to be? A. I would judge it to be 30 feet at all event.

Q. Did you observe this island when you were coming past on the 26th? A. Yes.

Q. Was the water breaking over it? A. No, there was no water breaking over it. The surf was breaking around the shore, the same as any other island.

Q. Did you see Capt. Morin take the bearings he has spoken of? A. Yes.

Q. Did you do anything to verify the correctness of them? A. Yes, I looked at the compass immediately afterwards. I am prepared to say that they are correct.

Q. How did you find them correspond; the north part of it would bear how? A. White Island bore W. N. W., and Liscombe Light bore N. E. $\frac{1}{2}$ N.

Q. Will you look at the chart and tell us if the places from which you took the bearings are correctly laid off on the chart? A. (After looking at chart) Yes.

Cross-examined by Mr. MacCoy:

Q. You did not lay down the lines on the chart? A. No.

Q. Were you present when they were laid down? A. No.

Q. Yet you swore that they are correct? A. I swore that the bearings are correct.

Q. In this chart it is called "Gull Ledge," is it a ledge or an island? A. I would call it a small island.

Q. What is it composed of? A. The same material as the rest of the coast.

Q. That is, rock? A. Rock, and there may be vegetation on the top.

Q. I am asking what it is composed of, from your own personal knowledge? A. Rock.

Q. There are two rocks which, together, are called Gull Ledge? A. There is only one to my knowledge.

Q. Will you look at this chart and see; that is a ledge is it not? A. Yes.

Q. And according to the chart they are separate and distinct? A. Yes, there are two ledges, one inside the other.

Q. You did not know that, did you? A. No, you could not see any land between from my point of observation.

Q. Will you say that Gull Ledge is an island? A. Yes, it is. It is far enough above the water to look like an island.

Q. How often have you seen it? A. I could not say.

Q. Have you seen the sea breaking right over it? A. I have not been there in a heavy sea. No ordinary sea would break over. It would break further up on it. The highland would be on the west end.

Q. Does the sea break up to the 30-foot rock? A. I cannot see how it would to any extent. It might spray over it, but, judging from other islands on the coast, it would not break over it much.

CHRISTOPHER BENNETT, called and sworn.

Examined by Mr. Ritchie:

Q. You are second officer of the *Aberdeen*? A. Yes.

Q. You were on board on the 25th of May when the *Gerring* was seized? A. I was.

Q. Tell me at what time that evening you went on duty yourself? A. I was to go on duty after 6 o'clock.

Q. Would that be Halifax time? A. Yes.

Q. Did you go on deck to go on duty at that time? A. I was coming out of the after companion way to go on duty when I met Captain Knowlton coming down.

Q. What I want to know is this,—when you went on duty at 6 o'clock on the evening of the 25th May had the captain of the *Aberdeen* then gone on board of the *Gerring*? A. No, he was coming down.

Q. How long after that did he go on board of the *Gerring*? A. It may have been ten minutes, or more.

Q. It was sometime after six o'clock when he went on board? A. Yes.

Q. Did you go on board the *Gerring* that night? A. Yes.

Q. How long did you remain there? A. I remained there until 9 o'clock that night.

Q. When did you go on board? A. I went on board about half past six.

Q. Did you hear the conversation between the captain of the *Gerring* and the captain of the *Aberdeen* with regard to towing the log? A. I heard the captain of the *Gerring* ask our captain to allow him to run the ship to Liscombe Light and tow the log.

Q. Did the captain of the *Gerring* say anything about towing the log to Gull Ledge? A. Not in my presence.

Q. What did Captain Knowlton say when the request was made about towing the log? A. He told him that it would be of no benefit to him, and that he did not feel that it was necessary to do so.

Q. Did you hear the captain of the *Gerring* make a request to tow his own log to Liscombe Light? A. No.

Q. Were any orders given that he should not be allowed to do so? A. There were no such orders given to me.

Q. After the *Gerring* was seized in whose custody was she placed? A. She was placed in mine.

Q. How long did she remain in your charge? A. Until 9 o'clock.

Q. Tell us what conversation you had with the captain of the *Gerring* during that time in regard to his position? A. We did not have much; he said if he was put on oath he would not swear if she was inside or outside of the limits; that he had an old chart there that he could not depend on.

Cross-examined by Mr. MacCoy:

Q. Did you go on board at 6.30 o'clock, captain? A. No, the captain sent the boat back for me.

Q. You say there was no request made by the captain of the *Gerring* in your presence to be allowed to tow the log to Liscombe Light; did he not ask to tow his own log to Liscombe Light? A. No.

Q. He did not make any request to be allowed to tow his own log? A. He made none to me.

Q. Did you hear any request made to the captain of the *Aberdeen*? A. No.

Q. How long was the captain of the *Aberdeen* on board the *Gerring* before you? A. I judge that he was on board about 20 minutes before me.

Q. Have you had much experience on that shore? A. Not a great deal; I have been on deep water mostly.

Q. The *Aberdeen* sails up and down the line to give notice to people, does she not? A. No, we are sometimes 3 and sometimes 6 miles off.

Q. But she would run up and down the shore, would she not? A. Not always.

Q. If you are asked as to your position, you tell people? A. We have not been asked more than once this season, as far as I know.

CAPT. HECTOR MacKENZIE, called and sworn.

Examined by Mr. Ritchie:

Q. You are the captain of the Dominion cruiser *Vigilant*? A. Yes.

Q. She is a sailing vessel? A. Yes.

Q. How long have you been engaged in the fishery protection service of Canada? A. Since 1886.

Q. How long have you been a master mariner? A. For over 40 years.

Q. You remember the 25th day of May, last? A. I do.

Q. What were you doing that day? A. I was cruising off Liscombe, on the *Vigilant*.

Q. Did you see the *Gerring* there that day? A. I did.

Q. What time in the day did you first see her? A. It was between four and half past.

Q. What was she doing? A. When I first noticed her she was going up alongside a seine boat.

Q. Was there a seine alongside the boat? A. Yes, the seine was set and pursed up.

Q. That indicates that the fish are caught and in the seine? A. Yes.

Q. How close were you to her at that time? A. I was inside of 200 yards from the seine.

Q. How long did you remain in that vicinity after the schooner went alongside of the seine boat? A. I took the bearings and found that she was outside of the limit, and left.

Q. How far did you find that she was outside of the three-mile limit? A. She was a good half mile.

Q. Can you give us the bearings? A. Liscombe Lighthouse bore N. E. by N. $\frac{1}{2}$ N., and Little White Island, the middle part, N. W.

Q. Are these the bearings at the time the seine was set, or at the time that the schooner came alongside? A. Those are the bearings at the time the seine was out. Those are the bearings where the *Vigilant* was.

Q. About what time of the day was that? A. It was between 4 and half past four in the afternoon.

Q. Did you take bearings after that? A. No, I went to the westward then.

Q. You say that you were close to the *Gerring* when she came up to the seine boat? A. Yes.

Q. How long after you took the bearings did the *Gerring* come close to the seine boat? A. It was about ten minutes.

Q. Shortly after that you went away? A. Yes, I went right along to the westward.

Q. How long after you left that vicinity and went to the westward was it before you saw the *Aberdeen*? A. It would be over an hour; an hour or an hour and a half.

Q. Did you see the *Aberdeen* go alongside of the *Gerring*? A. Yes.

Q. How long would it be from the time you left the *Gerring* until the *Aberdeen* came alongside of her? A. I think it would be about 2 hours, but I was not very particular about it.

Q. Did you take any bearings at the time the *Aberdeen* went alongside the *Gerring*? A. Yes, I did; I wanted to see how she bore from me. As near as I can recollect it was E. N. E.

Q. Was the *Gerring* in the same position at the time the *Aberdeen* went alongside as when you left her? A. No.

Q. Was she nearer inshore or further off? A. She was nearer inshore.

Q. How did you observe that? A. By my own position. I know that she was inside the limit of the Gull Ledge. I had drifted in myself. The current was drifting me in all the time.

Q. Can you tell us what it was that drifted you in? A. There was a heavy swell from the south and no wind. There was a westerly set.

Q. Was that peculiar to that particular day? A. No, we always guard against it on that coast.

Q. When do you find it strongest? A. In the spring of the year.

Q. And before what wind? A. Before or during an easterly wind.

Q. How was the wind the next day after this? A. It was east or E. S. E.

Q. Was it a strong wind? A. It was pretty strong; it was a wholesale breeze.

Q. You noticed that drift on that occasion? A. Yes.

Q. Bearing in mind the position that the *Gerring* was in at the time you left her, and the extent and effect of the current, what would be your judgment as to whether she would drift within the limit between the time that you left her, and the time that the *Aberdeen* went alongside? A. I think that she would drift in.

Q. Have you observed that the *Gerring* had got inside the limit before the *Aberdeen* went to her? A. I had.

Q. You had noticed that? A. I had.

Q. How long after you left her was it before you noticed that? A. I don't know that I noticed it until I saw the *Aberdeen* come.

Q. That would be how long after you left? A. It would be over an hour after I left.

Q. Did you see the fishing schooner *Haskins* there that afternoon? A. I did.

Q. At the time you left the *Gerring*, had the *Gerring* taken any fish out of her seine? A. No.

Q. At the time you left what was the *Haskins* doing? A. She was taking her fish out.

Q. At the time you left, which was nearest the shore? A. The *Gerring*.

Q. What is this current that you speak of, what direction does it set in? A. There is an indraft through the islands all along that shore.

Q. This Gull Ledge, have you been on it? A. I have.

Q. You might describe it as well as you can? A. It is a ledge of rocks with some vegetation on the top, earth and moss and stuff. I did not take much notice of it.

Q. When did you land there? A. It was a year ago last August.

Q. Give us an idea of the size of that portion of it not covered at high water? A. The portion never covered, as far as my remembrance goes, is nearly a quarter of a mile long, and one-eighth of a mile wide. That is the two ledges together.

Q. And the highest part is how high? A. It is about 25 or 30 feet I would judge.

Q. Does the sea wash over it? A. No, but the spray may blow over it.

Q. That is in heavy weather? A. Yes, it does not wash over as far as my judgment goes.

Cross-examined by Mr. MacCoy:

Q. You were sailing up and down the limit that day? A. I was sailing up and down the coast.

Q. Were you not sailing up and down the line? A. No, I came out of Liscombe and saw the fleet to the westward, and worked up to them.

Q. Did you go to the eastward that day? A. I did in the evening.

Q. What time did you come out of Liscombe? A. We got under way about 6 o'clock in the morning.

Q. How far to the westward did you come? A. When we came to the *Gerring* that was the furthest. The furthest I went was off of White Island. That is west of where the *Gerring* was.

Q. You say the *Gerring* was outside the limit when she set her nets? A. Yes.

Q. You saw her when she pursed up the seine? A. Yes.

Q. How far were you from her then? A. I was less than 200 yards from her.

Q. The fish would be all in the net at that time? A. Yes.

Q. You saw the seine boat out? A. Yes.

Q. And you saw the *Gerring* go down to where the boat was? A. Yes.

Q. At that time the *Gerring* was outside the limit? A. She was.

Q. Had she not commenced to dip before she went to White Island? A. I did not see them dipping, but they may have done so.

Q. How close did you pass? A. I was within 200 yards. We were east quite a piece before the *Gerring* got alongside the seine boat.

Q. How far outside the limit was the net when they pursed it? A. It was half a mile outside.

Q. How far was the vessel herself outside the limit when you passed going to White Island? A. She was nearly alongside the seine boat.

Q. And the seine boat was alongside the net? A. Yes.

Q. Now you heard the testimony of the captain of the *Aberdeen*; will you tell me what is the rate of current there at this particular date? A. No, I cannot.

Q. Was there any wind at the time you passed? A. There was just enough for the *Gerring* to get alongside of her net.

Q. With her sails balanced, and half a mile away, and the net in the sea, would she be carried half a mile in the course of an hour? A. Yes, with the swell and the current.

Q. Further than that, I suppose? A. It may be.

Q. What is your judgment about that? A. That day, according to the way I was carried in myself, she would.

Q. The head of your vessel with the heavy swell would be constantly changing? A. She would be slapping about.

Q. That would make it more difficult to take exact bearings? A. No.

Q. You will not say that they had not commenced to get out their fish when you passed? A. No.

Q. Do you know a man named Capt. John McKinnon that you met at Sydney? A. Yes.

Q. You had a conversation with him? A. Yes.

Q. Did you tell him that at the time the *Gerring* was seized she was outside of any land, about 4 miles off? A. No.

Q. You were in Sydney? A. Yes.

Q. Do you remember at what time? A. I got into Sydney?

Q. While your vessel was in the harbor, you met McKinnon on board of your own vessel? A. Yes.

Q. And you had a conversation with him about the seizure? A. Yes.

Q. Did you on that occasion tell McKinnon that the *Gerring* was outside of any land 4 miles when they set their seine? A. No, I said he was outside the limit when he set his seine.

Q. You contradict that do you? A. Yes, I do.

Q. Do you recollect the whole conversation? A. Recollect his being on board and talking about the *Gerring*.

Q. He says at that time you told him that at the time the seine was set he was 4 miles off of any land. You say that you did not say that? A. Yes.

Q. You are quite clear about that? A. Yes.

Q. What did you say? A. I said that he was outside the three-mile limit.

Q. How far did you drift in that day? A. I could hardly say, but I got inside the three miles.

Q. How far will a vessel balanced drift if there is no current? A. She will not drift at all unless there is a swell.

Q. How far will the swell carry her? A. The swell would not carry her with the seine attached as far as it would us.

Q. How far would it carry her? A. It would throw her in half a mile in an hour.

Q. What rate of current is there at this season of the year? A. The indraft I would say would be perhaps half a knot an hour.

Q. Between the two, she would drift a mile; would you say that? A. Yes, she has drifted a mile. I judge by the bearings when Capt. Knowlton seized her.

Q. Where were you when she was seized? A. I was a mile or a mile and a half away.

Q. Why did you not bear down and seize her yourself? A. I did not feel myself justified in doing so, because I know that she had taken the fish outside.

Q. You saw the captain of the *Haskins* there? A. Yes.

Q. Do you remember the captain of the *Haskins* asking you if he was outside the 3 mile limit? A. I don't know who it was, but someone did.

Q. Was it someone in a boat? A. No, he was at the mast head.

Q. You told him that he was all right? A. What I said was "You are all right, go ahead."

Q. How long does it take to put the net out, and to purse it up and catch the fish? A. A good crew will do it in 10 or 15 minutes.

Q. From the time the net is set until it is pursed up would not be more than 10 minutes? A. It would be 10 or 15 minutes.

Q. So that at the time the fish were in the net, and at the time the *Gerring* run down to secure the fish, they were outside the three-mile limit at that time? A. They were.

Wednesday, August 6th [5th], 1896.

The Court resumed at 11 a. m.

Mr. Ritchie tendered in evidence the ship's papers (marked J. M. D. "a") and the chart (marked J. M. D. "b").

CAPT. OSPREY C. V. SPAIN, called and sworn.

Examined by Mr. Ritchie:

Q. You are commander of the fishery protection service of Canada? A. Yes.

Q. You have been so for how many years? A. I have been so for 5 years.

Q. Do you know what is called Gull Ledge off the coast of Nova Scotia, near Liscombe? A. Yes, I know it well.

Q. Have you visited that vicinity recently? A. Yes, I have been there three times within the last month.

Q. How did you visit it? A. I visited it in the Dominion cruiser *Acadia*.

Q. Did you make any measurements on the water near that place? A. I did.

Q. When did you do so? A. I did so on the first occasion we were there; I think it was in the middle of July.

Q. What measurements did you make there on the water at that time? A. We got the ship into bearings with Big White Island, and Liscombe Light.

Q. Give me the bearings of the place into which you got your vessel? A. Liscombe Light bore N. E. $\frac{1}{2}$ N. and the northern point of Big White Island bore W. N. W.

Q. Show me on the chart J. M. D. "b" what you call the northern point of Big White Island? A. I mean that point of it touched by the line marked W. N. W. in ink on the chart. It is on the western extremity of the island, and might be called the north-western point of the island.

Q. From the place you were when you got the bearings, you made measurements on the water to where? A. Made a measurement from there to Gull Ledge. I found it to be a little over a mile and a half. It would not be as much as a mile and three-quarters.

Q. How did you make the measurements? A. I made it by means of a patent log.

Q. Did you have more than one log? A. Yes, I had two—there was one on the port side and one on the starboard side.

Q. With your two logs out you ran from the point of intersection of the two bearings to Gull Ledge? A. Yes.

Q. What do you say about the correctness of those Patent logs? A. I say that they were absolutely correct.

Q. How do you know that? A. I know it by observation and experience; they are the two logs we have used all winter.

Q. Have you tested them before and since? A. Yes.

Q. Did any of your officers have an opportunity of observing the bearings and measurements you took? A. Yes, my first and second officers had. They are Mr. Kinney and Mr. Milne.

Q. What do you say about the correctness of the compass with which you took the bearing? A. It is perfectly correct. It is one of Sir William Thompson's patent compasses and is corrected more or less every day. It was probably corrected the day before I took the bearings, and it might have been corrected the day following, that evening, or the next morning. I can say positively that it was corrected the day before and the day after.

Q. Did you do anything to verify its correctness on this particular occasion? A. Yes, I took an angle with a sextant, between the northern point of Big White Island and Liscombe Light.

Q. What did that indicate? A. It indicated the same number of degrees on the sextant that were shown as points on the compass.

Q. And what did that show in regard to the correctness of the bearings? A. It showed that the compass was correct.

Q. Look at the chart J. M. D. "b," and tell us what you say in regard to the correctness of the chart in the vicinity of Gull Ledge and Liscombe. A. As far as I know it is absolutely correct. This is the chart we invariably use when running up and down the coast, and I have always found it correct in every way. It is the Admiralty chart. I have been using it personally for five seasons.

Q. Have you had occasion to know that it is correct in this particular vicinity by passing there? A. I know that the soundings in that vicinity are perfectly correct.

Q. How do you know that? A. I know because we have sounded on it.

Q. In using a chart like that do you have an opportunity of verifying its correctness? A. Yes, continually. I have done that and have found this chart quite correct.

Q. Have you ever been on this place called Gull Ledge? A. Yes, I have been there twice. I was there the day before yesterday, and the Saturday before that.

Q. What does this Gull Ledge consist of? A. It consists of the islands about thirty foot apart,—the one lying inside of the other. I landed on the inner island, which is the largest.

Q. Give us an idea of the size of the inner island? A. Speaking approximately it is larger than George's Island in this harbor, but not as high. The area is larger.

Q. Did you make any measurements of the island? A. Yes, it was 400 yards long, 160 yards wide, and 42 feet high.

Q. How did you measure the length and breadth of it and the height? A. We measured the height of the island with a tape measure.

Q. Would that give you the exact height above water? A. We made the highest point from the water line, 52 feet, but I took the height afterwards with a sextant, and found that it was only 42 feet.

Q. Did anyone assist you in making the measurement of the height? A. Yes, my second officer, Mr. Milne.

Q. Give us a description of the island as to the nature of it? A. We landed on the inner island, and I found a fisherman's shanty there with a stove in it, and a large number of lobster traps. There was a fair amount of vegetation on the island. There was

a patch of hay land about 100 yards long, by about 150 yards wide. There was a spring of fresh water, and there were pools of fresh water all over the place.

Q. Did you make any examination as to the character of the soil? A. Yes, we thrust a stick down and found that the average depth was about a foot. The soil was a sort of brown loam. I brought away specimens of the soil and grass with me.

Q. What would you say as to the possibility of waves breaking over the island? A. I would say that at no time during the heaviest storm would waves break over the island; it would be quite impossible. I am speaking of the inner island.

Cross-examined by Mr. MacCoy:

Q. There are a large number of Admiralty charts, are there not? A. Yes.

Q. They are all pretty much alike I suppose? A. Yes.

Q. This chart is the same as yours, is it not? (Hands chart to witness for examination.) A. This chart would be more likely to be correct, as it has later corrections on it. (Chart marked J. M. D. "c.")

Q. Speaking of the chart that you put in here the bearings shown on it from Liscombe Light to the northwestern point of Big White Island were laid down by you? A. Yes.

Q. You were not there at the time the bearings were taken? A. No. I was not on the spot.

Q. Then you laid the bearings down on the chart not having been present when the *Gerring* was seized? A. Exactly; I put the bearings there.

Q. Did you take the height of the outer island? A. I did not, but it is higher than the inner island.

Q. Was it high or low tide when you took the height of the island? A. It was just about half high.

Q. Your chart says that Gull Ledge is 30 feet out of the water at high tide? A. Those heights are only approximate.

Q. Are the charts not made from actual surveys? A. Yes.

Q. Then do you say that any statement made there with regard to the height of the island is incorrect? A. No.

Q. What do you mean then; do I understand you to say that the island marked on the chart is more than 30 feet high?

A. By my measurement it was 42 feet.

Q. Will you say that the measurement as shown on your own chart is incorrect? A. No.

Q. Then if it is not, and the island is only 30 feet high, how do you say that you are correct? A. The measurement of 30 feet was taken at high water, while I took my observation at half high.

Q. Will you tell me how high the tide rises there? A. No I cannot, I don't know; it might rise six or eight feet.

Q. That would not be sufficient to account for the difference; I think you were there after the last big rain storm? A. I was there after the rain storm and before.

ERNEST KINNEY, called and sworn.

Examined by Mr. Ritchie:

Q. You are the first officer of the Dominion cruiser *Acadia*? A. Yes.

Q. How often has the *Acadia* been in the vicinity of Gull Ledge during the last month or so? A. She has been there three times.

Q. On the first occasion were any bearings taken? A. Yes.

Q. Can you tell us the bearings that were taken? A. Yes, Liscombe Light bore N. E., $\frac{1}{2}$ N., and the North or North western part of Big White Island bore W. N. N.

Q. And the *Acadia* was placed at the junction of those bearings? A. Yes.

Q. From the point of intersection of those two lines, what was the distance to Gull Ledge? A. It was about a mile and six-tenths. We took the distance with the Patent log. It was a little over a mile and a half.

Q. Have you ever been on the island? A. Yes, I have been on the inner island twice. I was there last Saturday, and again on Monday.

Q. What would you say as to the extent of soil that you found covered with grass? A. I should say that there was about half an acre, or perhaps more on the inner island covered with grass.

Q. What is the nature of the grass? A. It is long grass. I brought a sample of it away with me. There were also some kinds of wild flowers.

Q. Did you see any buildings on the island? A. Yes, there was the frame of a shanty, and part of the roof.

Q. Did it look as if it had been there for some time? A. Yes, it had the appearance of having been there for a number of years.

Cross-examined by Mr. MacCoy:

Q. When you took the measurements you spoke of, did you measure to the inner island, or to the outer island? A. We ran in to the eastern end of the inner island.

Q. Why did you not go to the outer island? A. The outer island is to the westward of the inner island. We could not go to the outer island without running the ship ashore on the inner one.

Q. How close did you go to it? A. We went within a few yards of it.

Q. What depth of water did your ship draw? A. She drew about 15 feet 6 inches. We went within 30 or 40 yards of the island.

Q. What was the size of the shanty? A. I suppose it was 4 feet by 6 feet.

(*The Court:* What would be the distance of any other land from the point of intersection from which you took the bearings? A. I suppose Goose Island would be the nearest. That is a mile and a half or two miles inside of Gull Ledge.)

WILLIAM J. MILNE, called and sworn.

Examined by Mr. Ritchie:

Q. You are the second officer of the Dominion Cruiser *Acadia*? A. Yes.

Q. Were you on board of the *Acadia* on the three occasions when she visited Gull Ledge? A. Yes.

Q. Did you see the bearing taken on the first of those occasions? A. Yes.

Q. Tell us what they were? A. Liscombe Light bore N. E. $\frac{1}{2}$ N., and the north point of White Island bore W. N. W.

Q. The northern point of Big White Island, at which end of the island was it? A. It was at the western end of the island.

Q. Then did see the measurement indicated by the patent log from the point of intersection of these lines to Gull Ledge? A. Yes.

Q. What is the distance? A. It is a little shade over a mile and a half.

Q. Can you give the distance exactly? A. It is between a mile and a half and a mile and six-tenths.

Q. Can you give us an idea of the length and breadth of the inner island? A. I should think it would be about a quarter of a mile long and 200 yards wide.

Q. Did you assist in the measurement made by Capt. Spain for the purpose of ascertaining the height of the island? A. Yes, I did. I carried the tape to the water's edge.

Q. What do you say about the correctness of that measurement? A. I suppose the tape line is correct.

Q. Is it a correct measurement? A. Yes.

Q. How much of the inner island is covered with grass? A. I should say that a little over half an acre is covered with soil and grass.

Q. Did you test the depth of the soil? A. Yes, I put a stick down in several places and found that it averaged about a foot in depth.

The plaintiff rests.

CAPT. JOHN ANGROVE, called and sworn.

Examined by Mr. MacCoy:

Q. You are a master mariner? A. I am.

Q. How many years have you been going to sea? A. I have been going to sea for about 36 years.

Q. How many years have you been a master mariner? A. For 27 years.

Q. Were you captain of the steamer *St. Pierre* for a number of years? A. Yes, for 12 years.

Q. You have sailed, where? A. From here to St. Pierre and return.

Q. Do you know the coast of Nova Scotia from Sheet Harbor to Liscombe Light? A. I know the general outlines of it.

Q. Are you pretty well acquainted with it? A. I know all the outlying dangers.

Q. Do you know the place spoken of as Gull Ledge? A. I know where it is situated.

Q. You laid down the red lines on this chart marked J. Mc. D. "c"? A. I did.

Q. I suppose you know the Admiralty charts, and have found them correct along that shore? A. They are what I have been in the habit of using.

Q. (Mr. MacCoy here reads to the witness the bearings of the schooner *Frederick Gerring, Jr.*, as stated in Capt. Knowlton's testimony.) You have laid those bearings down on the chart? Is that correct according to that testimony? A. Yes.

Q. Then this would be the place where the schooner was at the time she was seized? A. Yes.

Q. Capt. MacKenzie states where he found her when she ran down to her net (read statement as to this from Capt. MacKenzie's testimony), the place marked position of *Gerring* according to Capt. MacKenzie's testimony shows where she would be, according to Capt. MacKenzie's statement as to where he found her? A. Yes.

Q. These bearings that you have marked on the chart are correct according to that testimony? A. Yes.

Q. Now before an easterly blow, what is the direction of the current on that shore? A. Just before an easterly blow, the current sets to the westward.

Q. Do you know the direction? A. It sets directly westward, west along the shore, conforming somewhat to the trend of the land.

Q. Have you marked the direction of the current on that chart? A. Yes.

Q. Immediately before a strong easterly blow, what would be the rate of the current there according to your experience? A. It depends upon the force of the following wind. I have seen it run as high as a mile and a half an hour. With a strong easterly wind it would run from half to three-quarters of a mile an hour.

Q. Capt. Knowlton says that the next day there was quite a strong easterly wind. Assuming that to be so, in your judgment what would be the rate of current on that coast? A. I should say it would be less than half a mile an hour in that vicinity. It was running to the westward.

Q. Captain Knowlton says that when he first saw the *Gerring* she was lying with her head sails down, and her fore-sail and main-sail set with the booms off to starboard. (Reads evidence on this point.) I want to ask you with the wind blowing very lightly from the eastward, the current running half a mile an hour to the westward, the booms over the starboard side well out, the vessel fastened to her seine, with about 100 barrels of mackerel in it, and the seine about 15 fathoms deep in the water, in what direction the vessel would drift? A. Fishermen usually take their seine on the quarter to keep it clear of the vessel when in motion. The trend of the wind and current would send her in a south-westerly direction. I would say that she would probably make a course west by south. That is leaving a large margin.

Q. I want to ask you, supposing that there was a heavy swell on the shore, that the wind was blowing from the east very lightly, and that the vessel was in that position, and fastened to her net, whether she would drift inshore, or along shore, or more to the southward and westward? A. I don't think, with the weather you state, that there would be swell enough from the southward to give her an inshore trend against any light breeze that might be blowing at the moment. Of course if a vessel is lying without her sail she would not go more than a few hundred yards an hour.

Q. With the booms out to starboard and the sails well over, would the wind be sufficient to counteract the heavy swell? A. I should say so, if not more. If the vessel was keeping clear of her net she must have been making to the southward.

Q. Under circumstances such as Capt. Knowlton details, would it be possible for the vessel to drift from where she was found by Capt. MacKenzie to where she was seized by Capt. Knowlton? A. I cannot see very well how she could do it. I would say that she would not.

Q. Have you any doubt about it? A. No, not the slightest.

Q. She would have to drift north by west? A. Yes, about that.

Q. Then she would have to drift north by west from the place where Capt. MacKenzie found her, to the place where Capt. MacKenzie seized her? A. Yes.

Q. From your experience, with the current setting to the west, and the condition of the wind, and the position of the vessel as stated, would it be possible for her to drift north by west on that course? A. I cannot see it.

Q. In your judgment could it be done? A. No, it could not, the vessel would have to go back against her own sails.

Q. If she is fastened to her seine, and that seine is deep in the water, say from 8 to 10 fathoms, would that vessel have a tendency with her sails up and the wind from the east, to follow the direction of the swell or the direction of the current? A. She would have a tendency to follow the direction of the current; the seine would carry her with the current.

Q. Capt. Knowlton says that her head was to the southward, off shore, at the time he found her, and I think he says that the net was on the port side? A. It would have to be on the port side. If the boom was to starboard the seine was certainly on the port side.

Q. If the seine, at the time of the seizure was on the port side, and the vessel's head was off shore, and her sails were in the position Captain Knowlton describes, could she have fouled her seine? A. Not unless there was not sufficient wind to counteract the swell.

Q. According to your judgment, without the seine at all suppose the vessel was there headed off shore with the current setting to the westward, and very little wind, and there was a heavy swell on shore, would that swell be sufficient to counteract the wind from the east and the current, so as to carry her in the direction she must have gone if she was found where Capt. Knowlton says she was? A. The vessel must have had wind enough to counteract the swell.

Q. How many times have you been up and down that coast, and taken observations on it? A. Once a fortnight for 15 years.

Q. I understand that there is always a strong current setting to the west before an easterly blow? A. Yes.

Q. What is the depth of a seine when it is pursed up? A. From 12 to 18 fathoms.

Q. Do you know whether there is a roll towards the shore before an easterly blow? A. There is always more or less swell running in before an easterly blow.

Q. I want you to give me, as near as you can get to it, the distance from the place where Capt. MacKenzie left the vessel fastened to her seine to where Capt. Knowlton said she was. A. It is very little short of two miles, say a mile and seven-eighths.

Q. You said that her drift would be west by south? A. Yes, about that.

Q. Of course a vessel would drift quicker if she were light, than if she had a seine attached? A. Yes.

Cross-examined by Mr. Ritchie:

Q. According to the chart marked J. Mc. D. "c," how far are Capt. Knowlton's bearings showing the place where the seizure was made from Gull Ledge? A. Somewhere about a mile and three-quarters.

Q. You know the cruiser *Vigilant*? A. Yes, I have seen her.

Q. Assuming that she left the place indicated as that where the seine of the *Gerring* was set, going to the westward at about 4 o'clock in the afternoon, with a swell from the southward and hardly any wind, would she drift inshore at all? A. If she was tending outwards, I don't think she would.

Q. If she were keeping about three miles from the shore, keeping to the westward, with hardly any wind and a southerly swell, would she drift inshore? A. She would have tendency to do so, but the master would be able to correct it.

Q. The lighter wind there was, the greater would be the tendency to drift inshore? A. Yes.

Q. I want to ask you, supposing the seine of the *Gerring* was set at about 4 o'clock, or between 4 and half past 4 o'clock, at the place indicated by Capt. McKenzie, and the schooner then left the seine and was sailing up and down while they were pulling the seine, during that operation assuming that there was little or no wind, and a southerly swell, what would be the trend of the seine? A. The trend of the seine would be with the current. The swell would have no effect upon it. The seine would be 12 to 14 fathoms deep, while the swell would be simply on the surface, so that the current would have more effect upon the seine than it would have on the vessel.

Q. Have you made any experiments to determine that? A. Nothing more than that I have seen fishermen out working when I was passing through them.

Q. Have you got a positive idea about that? A. I would not like to swear positively, but speaking from a general knowledge of ocean currents, I imagine that that would be the case.

Q. Supposing the seine was made fast to the schooner somewhere near where it was put out, upon what do you base your opinion that she would not work inshore? A. Capt. MacKenzie says that the schooner was fast to the seine with the boom on the starboard side, the vessel headed to the south, and the current setting to the westward. This was setting the seine towards the schooner, and if the schooner did not get out of the way of the seine, she would foul it. Therefore there must have been air enough to keep the schooner drifting faster than the net. She certainly would not go astern.

Q. Then the first ground you state in support of your opinion that she would not drift inshore, is the fact that the seine was on the port side of the schooner? A. Yes.

Q. And the next is the fact which you assume that the seine did not foul the schooner? A. Yes.

Q. Bringing the seine on the port side of the schooner, would that bring it inshore? A. Not necessarily, it would bring it to the eastward of the schooner. The schooner going ahead would trail the seine to a certain extent behind her.

Q. What other reason have you for stating this opinion of yours? A. The impossibility of the schooner going astern with her sails full on one side.

Q. Now, if the seine were set where Capt. MacKenzie says it was between 4 and half past 4 o'clock, and if the vessel was seized something after six, you base your opinion on the fact of the sails having been in what position that time? A. On the ship's starboard side.

Q. If that is not so, you would not express any opinion about it? A. I would not express so strong an opinion.

Q. That is the main ground you have? A. Yes.

Q. Now, with a southerly swell, and the current as it is there, the natural tendency would be to drift the vessel inshore with a tendency to the westward? A. If there was nothing to influence

the vessel in any way, I would say that she would probably make a northwesterly course. I understand the meaning of the question to be that she was not attached to the seine. That would take her in the direction of Little White Island.

Q. You would not be prepared to say that she would not drift more inshore than that? A. If I was in a disabled vessel there, I would expect her to go ashore in the vicinity of Little White Island. The current is about equal to the trend of the swell.

Q. She might go north or north-west? A. She might but it would not be much.

Q. It would depend on the force of the swell? A. Yes.

Q. The heavier the swell the more she would go to the north? A. Yes.

Q. Is there anything else that you base your opinion on than the fact of the vessel being in that position with her sails on the starboard side? What other ground have you for saying that she did not drift as Capt. MacKenzie says he saw her drift? Is there anything else than the fact that the sails were on the starboard side? A. In all my experience at sea, I never knew the opposite to happen under the circumstances. I know of nothing else. If Capt. MacKenzie's statement is correct, the other man must be wrong.

Q. If the sails had been down all the time what would you say in that case? A. That would be a different thing; I think that she would have drifted more in a northwardly direction.

Q. I suppose these swells and currents do not always work in the same way? A. They repeat themselves pretty correctly.

Q. Do you not sometimes drift in a way that you cannot account for? A. Very seldom.

Q. Do you mean that it is impossible, or only that it is unusual? A. If a person has taken note of the weather on our coast, he finds that they repeat themselves as regularly as clockwork. I never knew the currents to get out of their regular course, taking everything into consideration at the time.

Q. How is it possible for you to tell us the westerly drift that a vessel would have on that day without having an accurate knowledge of the extent of the swell? A. I know from Capt. MacKenzie's report of the next day that a south-easterly gale was blowing up.

Q. In finding out whether she will drift further to the north you must estimate the extent of the swell? A. Certainly.

Q. How do you arrive at an accurate knowledge of the extent of the swell that day? A. That comes from practice; it does not happen every day the same.

Q. How do you know the extent of the swells on shore that day? A. I have a pretty good knowledge of the swells that roll in on the shore almost any day. It varies every day.

(*The Court:* How far would you pass from this locality on your trips going to St. Pierre? A. Not more than 4 miles.)

Q. When you were speaking of the strength of the current there, you said it would run half a mile an hour? A. I imagine that it would not be less.

Q. Did you mean a nautical mile? A. Yes.

Q. Your experience along the coast has been how far from the shore? A. Generally, between 3 and 4 miles, but I have been in right close to the rocks.

Q. Can you tell me whether nearer to the shore, the current is more variable in consequence of following the trend of the land than it is further out? A. Inside the shoals, I think it is more influenced by the tide than it is further off.

Q. Therefore, close inshore the current would not have the same effect upon an object? A. I imagine not among the islands.

Re-examined by Mr. MacCoy:

Q. In speaking of the force of the current that day, you base your judgment upon the fact that there was very little wind, and that there was an easterly blow the next day? A. That is what I base my opinion on.

Q. Is there with very little wind, immediately before an easterly blow, what is called a heavy swell on the shore? A. (Objected to.) The south-west swell always increases 24 hours before a south-easterly gale.

Q. Would that be a heavy ground swell, or would it be pretty much on the surface? A. I don't think it would go more than a couple of fathoms under water.

(*The Court:* I understood you to say that assuming the bearings given by Capt. Knowlton and Commander Spain to be accurately stated, the location they made of the bearings on the map is correct? A. Yes, quite correct.)

Q. And assuming the bearings given by Capt. MacKenzie to be correct, those bearings are also correctly stated on the chart? A. Yes, it is correctly stated on the chart.

CAPTAIN WILLIAM NAUSS, called and sworn.

Examined by Mr. MacCoy:

Q. You have been engaged in the fishing business? A. Yes.

Q. Have you commanded many fishing vessels? A. Yes, I have commanded vessels from this port and from the port of Gloucester also.

Q. For how many years? A. I commanded vessels for 14 years for one firm out of Gloucester.

Q. How many years have you been in our own vessels? A. For 10 or 12 years.

Q. You are a Nova Scotian? A. Yes.

Q. You live in Halifax? A. I live here now.

Q. Do you know the coast that has been spoken of? A. Yes, I have known it pretty well for 36 or 37 years.

Q. Have you fished off the place known as Gull Ledge? A. Yes.

Q. For many years? A. I have been back and forward for 27 or 29 years.

Q. You have laid down the courses on this chart too? A. (Referring to chart J. Mc. D. "c.") Yes.

Q. As laid down they are correct? A. Yes.

Q. Will you tell me the direction or trend of the current in the vicinity of Gull Ledge immediately before an easterly blow? A. I always found the current running westwardly, and more so before an easterly breeze.

Q. You have tested the bearings as testified to by Capt. MacKenzie? A. Yes.

Q. And this chart shows the spot where the vessel would be according to Capt. MacKenzie's evidence? A. Yes.

Q. Captain Knowlton says that she was heading off shore. Bearing this in mind, is it possible with a westwardly current for a vessel placed in the position that she was in, with the wind to the east, and very little wind, and the current running in a westerly direction, and a heavy swell setting on shore, to have drifted from

where Capt. MacKenzie placed her to where she was found by Captain Knowlton? A. In my judgment it is not possible. I have been in fishing vessels for 27 to 30 years. When bailing fish out we always have to keep the vessel going ahead a little. When bailing fish, we have to have the booms out and the further they are out the further the vessel will go ahead. We have to keep the booms well out or she will back down on the seine.

Q. The booms being on the starboard side, would that indicate the direction of the wind? A. The wind was from the east. You can bail fish on either side. The wind would be on the opposite side to the side that the booms were out over.

Q. Now with the current she would have to drift north by west? A. Pretty near.

Q. She would have to go against the wind, and in a straight direction to the point where she was found? A. Yes.

Q. And that would be north by west? A. Yes.

Q. Now at the time she was found by Capt. Knowlton, she was heading off shore. What is the depth of a seine when it is pursed up? A. They vary. The depth would be from 25 to 30 fathoms at first, and then they purse up to 15 or 16 fathoms.

Q. When a seine is pursed up, is the vessel brought alongside? A. Yes, she must be. The seine is fastened fore and aft to the vessel, so as to make her lie square or you cannot bail out.

Q. Have you pursed up seines in this locality? A. Yes, or not far from it.

Q. What effect has the seine, after it is pursed up, upon the drift of the vessel? A. She would tend the way the current goes. The current goes in a westerly direction, the seine would drag the vessel that way.

Q. With very little wind from the east, and the seine in the water as you describe, and the current running as you describe, in what direction would the vessel drift in your judgment? A. She would drift west by south. She would drift from half to three quarters of a mile an hour. It would depend on the wind. She would go fully as fast as the current.

Q. There being very little wind, and a heavy swell on shore, would that have a tendency to carry her in, or would she still drift in the direction you speak of? A. The seine would have a tendency to keep her in a westerly or south-westerly direction.

(*The Court:* The current would have more effect on the seine than it would on the vessel? A. Yes.)

Q. Would that counteract the tendency of the swell towards the shore? A. Yes.

Q. Suppose that there is very little wind from the east, and her booms are over as described, would that be sufficient to counteract the effect of the swell? A. Yes, it would.

Q. Suppose a vessel is not fastened to her seine and is headed off shore, and her booms are out as described, and the current is running to the west, and there is very little wind from the east, in what direction would she drift; would she drift to the shore? A. She would drag a little in but not much.

Q. If there was any wind, would it counteract the swell? A. It would take very little wind to do it.

Cross-examined by Mr. Ritchie:

Q. Do you say that assuming the *Gerring* to have set her net in the place indicated by Capt. MacKenzie, and assuming the other conditions to be as stated, it is impossible that she could drift from that point in a north-westerly direction? A. Yes, it is impossible.

Q. The position stated by Capt. MacKenzie is represented on the chart marked J. Mc. D. "c?" A. Yes.

Q. And you say that assuming the conditions to be as stated, it would be impossible for the vessel to drift to White Island? A. Yes, according to the conditions stated.

Q. In making up your opinion how do you understand that the sails of the *Gerring* were from the time her net was set down to the time of her seizure? A. It is said that the sails were on the starboard side, that is what I understand.

Q. How do you understand the vessel was heading during that time? A. I understand that she was heading in a southwardly direction from the shore, and that the wind was to the eastward.

Q. Have you ever been on Gull Ledge? A. I have been all around it, but I have never been on shore. I have sailed pretty close to it, both inside and out.

Q. Your opinion is that on that day off White Island there was not sufficient swell to take a vessel inshore at all? A. I don't say it would not take her inshore at all, but it would not be as much as is stated by the witnesses for the crown.

Q. The extent to which the swell would take her in depends upon the strength of the swell? A. The effect of the current on the seine would more than counteract the swell.

Q. But the extent to which the vessel would go in would depend upon the strength of the swell? A. Yes, the more swell, the more she would go in.

Q. But you think the swell that day was not more than sufficient to counteract the current? A. I would think that the current and the sail would more than counteract the swell.

Q. Suppose there was no wind, in that case she would drift in more? A. She would go in a westwardly direction; I don't think she would go northwardly.

Q. You think it would not take her inshore? A. It would take her in very little. The seine with 200 barrels of mackerel in it, would hold her like an anchor.

Q. You assume that there were 200 barrels of mackerel in the seine? A. If there were only 100 barrels in it, it would be quite a drag on her.

Q. How do you understand that she was heading? A. I understand that she was heading off shore.

Q. In what direction? A. It would be hard for me to tell.

Q. Towards which point of the compass did you assume that her head was, or did you take that into consideration at all? A. They said the wind was east; I understood that she was going to the westward.

Q. In forming your opinion, how did you assume that her head was pointing? A. I assumed it was in somewhat of a southwardly or eastwardly direction; it depends upon how the wind was.

Q. You would not be surprised to find a vessel with a heavy southwardly swell on that coast, making from 150 to 200 yards, supposing a seine was fastened to her? A. I don't think she could if she had anything fastened to her. I could not say how much she would go if she were separate.

Q. Do you say it is impossible for a schooner in a couple of hours with a heavy southwardly swell to get 200 yards nearer to the shore? A. She might with nothing fastened to her.

Q. With the seine fastened to her, what would you give her? A. I would not give her anything. She would drag to the westward.

Q. Assume that there was no wind, would it be impossible for her to drift 100 yards nearer to the shore? A. With the current running she would not.

Q. Do you know that the current varies? A. As a rule it runs in a westwardly direction; sometimes it runs a little slack.

Q. You are assuming that at this time it was running at its strongest? A. Well, it is said that there was a heavy wind the next day.

FRANCIS HENRY, called and sworn.

Examined by Mr. MacCoy:

Q. You are a fisherman? A. Yes.

Q. How many years have you been engaged in fishing? A. For about 17 or 18 years. I have been master of a fishing vessel for 4 or 5 years.

Q. Do you know this coast? A. Yes, I have been up and down it frequently.

Q. Are you a Nova Scotian? A. Yes.

Q. Where do you live? A. I live in Halifax.

Q. When were you last at the place referred to in this suit? A. I cannot say exactly.

Q. What business are you engaged in now? A. I have been in the wrecking and diving business for 4 or 5 years.

Q. Do you know the place spoken of in this suit? A. Yes.

Q. Have you been close there? A. No, not very close; I have been 20 or 30 miles from there.

Q. Do you know anything about the tides there? A. Yes, the tides there are about the same as on any other part of the coast between Halifax and Canso.

Q. What is the trend of the tide? A. It trends west to W. S. W.

Q. Do you know anything of the rate of the current? A. Yes, it runs from a half to three-quarters of a mile an hour.

Q. Is it stronger before an easterly blow? A. Yes, generally.

Q. Suppose you find a fishing vessel headed off shore with her booms well out on the starboard side, would that indicate which way the wind was? A. Yes, the wind would be to the eastward.

Q. Do you know which way the vessel would drift with a

very light wind from the eastward, the current setting to the westward, and the booms of the vessel well over to the starboard side?

A. With a little wind, I think she would make a west by south course. If the vessel had a seine attached she would make a westwardly course.

(*By the Court:* Have you a personal experience as to how a seine attached to a vessel acts? A. The nets will always go with the tide.)

Q. With a heavy swell setting on shore, notwithstanding that the current is setting to the westward, and a net attached to the vessel she would go with the current? A. Yes that is my opinion.

(*The Court:* Have you any personal experience upon which to base your opinion? A. No, I never was in a vessel with a seine attached to her.)

Q. From your experience would you say that it was possible for that vessel under the circumstances, to drift from where Capt. MacKenzie placed her, to where Capt. Knowlton found her? A. No, not under these conditions.

Cross-examined by Mr. Ritchie:

Q. Would the fore-sail and main-sail set with the booms off to starboard, have any effect upon her drift if the sheets were off? A. If she was headed in a southwardly direction, it would have the effect of taking her off a little.

Q. If the sheets were off with a slight easterly wind, and with the sails off, would they have any effect? A. Yes, they would have the effect of taking her off shore.

Q. You think that the fact of the sheets being off does not make any difference? A. Yes, there is a difference.

Q. The wind would not have as much effect if the sheets were off? A. There would be a different effect.

Q. With the sheets held in flat the wind would have more effect? A. Yes.

Q. What is the object of throwing the sheets off? A. It is to make the vessel lie steady.

Q. The sails were arranged so that the wind would not have the effect of moving her? A. She had to move a little to prevent the seine from getting up under the bow.

Q. With the sheets off, the sails would have very little more effect than if they were not up at all? A. They would have more effect than that.

Q. I said very little more effect? A. They would have some effect; they would have the effect of making the vessel move ahead a little.

EDWARD MORRIS, called and sworn.

Examined by Mr. MacCoy:

Q. You are the owner of the schooner *Frederick Gerring Jr.*?
A. Yes.

Q. You are a native of Guysboro' County in this province?
A. Yes.

Q. You are now living in the United States? A. Yes.

Q. How many years have you been going to sea? A. I have been going almost ever since I could lift an oar.

Q. In what capacity? A. I have been going in fishing vessels.

Q. Do you know the place spoken of as Gull Ledge? A. Yes.

Q. How long have you known it? A. When I was a boy my father used to fish out of Liscombe, and I have fished with him. I have also fished there in vessels.

Q. For how many years? A. For many years.

Q. What do you know about the current? A. The current sets along the coast about W. S. W.

Q. Have you had experience in pursing seines? A. Yes, for 7 or 8 years.

Q. Describe how it is done? A. You take the seine and set it out of the boat, and when you get a school of fish you go alongside the seine with the vessel, and make it fast to the vessel forward and aft. You make the jibs fast and guy out the booms and bail out the fish with a long handled dip-net right on the deck of the vessel.

Q. Have you had experience when a seine is in the water in regard to the direction the vessel will go in? A. When you get alongside the seine, and are dipping out the fish the vessel must sag ahead a little or the seine will sag around the bow.

Q. In sagging ahead a little with a westwardly current, a light breeze from the east, and a heavy swell towards the shore in which direction will the vessel go according to your judgment? A. If the vessel heads the swell, it does not make as much impression as if she is lying sideways.

Q. Therefore, if there was no wind at all the current running against the seine and the vessel should carry her along the coast in the direction of the current. With the booms well over on the starboard side and a slight wind from the east without the seine attached at all in which direction would she drift? A. If there was no wind at all she would go with the current. A little air in the sails would counteract the swell.

Q. Have you had personal experience as to the effect of the swell and currents upon a vessel with a seine attached to her? A. Yes, I have been a good many times on the coast. The vessel is only a small item on the seine. The seine goes to the bottom and the current sweeps it right along.

Q. What is the depth of the seine? A. 28 fathoms to the bottom.

Q. What is the depth of the seine when it is pursed up? A. It is 12 to 14 fathoms.

Q. Would the tide have a greater effect upon a vessel with the seine attached than if the seine was not attached? A. Yes, a great deal more.

Q. The booms being out on the starboard side and the vessel heading off the land, did that indicate the direction of the wind? A. The wind must have been to the east with the booms out on the starboard side.

Q. Which side would she take the fish in on then? A. On the port side.

Q. From your experience on the coast would it be possible for a vessel under the conditions testified to here, to drift from the place where Capt. MacKenzie placed her to where she was found by the captain of the *Aberdeen*? A. No, it is impossible.

Q. Why? A. She would have to drift across the wind and tide stern foremost, and that is an impossible thing to do.

Q. Now which way would the wind and tide carry her? A. They ought to carry her west by south.

Q. Why would she go that way? A. On account of the tide.

Q. Would the swell have any effect upon her? A. No, it would only affect the vessel and would not have any effect at all upon the seine.

Q. If there was a little wind there would be a smooth swell? A. Yes.

Q. Which would not affect the vessel? A. No.

Cross-examined by Mr. Ritchie:

Q. Is it usual for a fishing vessel to lie with her sheets off and her jibs down when she is taking fish out of the net? A. Yes, that is the way they have to do.

Q. What is the object of it? A. It is on account of the seine. If the jibs were kept up it would tear the seine all to pieces.

Q. Why do you let the sheets off? A. They have to do it. If the sheets were kept in she would go stern foremost if the jibs were down.

Q. The object is to keep her in about the same position? A. Yes.

Q. In what direction do you think the vessel would have drifted if the sails had been down and everything else as it was? A. She would go to the westward.

Q. So the fact of the sails being up with the sheets off does not affect the matter much, one way or the other? A. If there was no wind it would not. With a breeze it would. She would have drifted about the same way if the sails had been down with the seine fast to her as it was.

Q. Then what you base your judgment upon is the fact that the current in your opinion was so strong that it would prevent the swell from setting the vessel inshore at all? A. Yes, and there must have been a little air or wind.

Q. What would be the effect while the vessel was taking in her fish if she was making to the eastward? A. She could not make to the eastward at that time with the wind and tide. The wind was to the eastward.

Q. What I want to ask you is, supposing when the vessel was taking in her fish she was making to the eastward, how would that affect her drift? A. I did not understand that. If the wind was to the eastward and the tide was setting to the west I do not see how the vessel could make an easterly drift.

Q. Suppose she was working up against the current she would drift in a little more? A. She could not be doing that; it is impossible.

Q. Is this correct, considering that the current was running to the west, and that there was a swell inshore, if the vessel had been in such a position that she was working to the eastward she would make more inshore than if she was not working to the eastward?

A. I cannot agree with that. I don't see how a vessel can make to the eastward with the current running to the westward.

Q. But if she is going against the current she will drift more inshore? A. Yes.

JUDGMENT OF CHIEF JUSTICE MACDONALD.

This is an action claiming the condemnation of the schooner *Frederick Gerring*, a vessel of the United States of America for a violation of the Fishery Laws of Canada.

The vessel was seized on the 25th day of May last past off Liscombe, on the southern coast of Nova Scotia, by the Dominion cruiser *Aberdeen*, where it is alleged she was engaged in fishing within three miles of the coast in violation of law. It is clearly proved that the defendant vessel when seized was engaged in fishing mackerel, but the defendants allege by way of defense, First, that when seized the vessel was not within three miles of the coast, and Second, that if at the time of seizure she was within the three-mile limit, she had thrown her seine, in which the fish were taken, while beyond three miles from the coast, and when seized was engaged only in saving from the seine the fish there lawfully enclosed by the seine. The facts appear to be concisely as follows: On the morning of the 25th of May aforesaid the fishing cruiser *Vigilant*, Capt. MacKenzie, commander, was cruising off Liscombe when he saw the defendant vessel with others, also fishing vessels, sailing along the coast. He first saw the *Frederick Gerring* between four and half past four p. m. fishing. The seine had been thrown and was then pursed up, and the schooner was going up to her boat which was attached to the seine, in which a quantity of fish was enclosed. Capt. MacKenzie passed within two hundred yards of the schooner and seine, but did not disturb her operations, as having taken his bearings and that of the schooner he decided that she was at least a half a mile outside of the prohibited line. The *Vigilant* then proceeded to the westward, cruising slowly along the coast, when about an hour and a half afterwards he observed the Canadian steam cruiser *Aberdeen* coming up from the west and south, and about half an hour afterwards saw her alongside the *Frederick Gerring*. The

Vigilant was at this time some distance to the westward of the *Frederick Gerring*. On approaching the *Frederick Gerring* and finding her engaged in fishing Capt. Knowlton of the *Aberdeen* took the bearings of his own ship and that of the *Frederick Gerring* and found that according to those bearings she was within two miles of the coast, and after communicating with the master of the *Frederick Gerring* arrested her for the offence of fishing within the prescribed limits. The evidence of Capt. Knowlton and his officers as to the exact locality in which he found the *Frederick Gerring* when the *Aberdeen* came up to her, appear to be very definite and precise. The cross bearings by which he determined that locality appear to be very carefully taken by himself and verified by his officers, all very intelligent and seemingly capable men, and it was admitted by Mr. MacCoy, the learned counsel for the defense, that if these bearings were correct, and no error, accidental or intentional, occurred in taking them, it could not be disputed that the defendant vessel was more than a mile inside of the prohibited line when seized. The master of the *Frederick Gerring* took no bearings and could give no idea of his position other than an impression he entertained that he could not in the time which had intervened since he threw his seine, have drifted so far inwards from the place where Capt. MacKenzie had at that time located him. This in fact is the only argument on which the defendants rest this point of their case, that is to say, if Capt. MacKenzie was right in the position assigned to the schooner when he left her about half past four o'clock p. m., it was improbable if not impossible she could have in the intervening time drifted inshore so far as the spot where Capt. Knowlton alleges he found her, and several respectable sea-faring persons were examined, who stated their opinion as experts that taking into consideration the state of the weather, wind, tide and currents then prevailing at this particular locality, they did not think it likely or possible that the change of the position of the schooner or seine involved in the contention of Capt. Knowlton could have taken place. Apart from the recognized uncertainty of expert evidence of this character, it is in evidence that the master of the *Frederick Gerring* at the time the *Vigilant* was in his neighborhood was himself uncertain as to his position and was guided in his decision to throw his seine by

the statement of Capt. MacKenzie that it was safe to do so, and his subsequent declaration that he could not on his oath state on which side of the line he was when he threw his seine, indicates the same uncertainty as to his position. But the expert testimony to which I have referred, is very much weakened by the evidence of Capt. MacKenzie of the *Vigilant*, a man fully as capable, experienced and intelligent as those persons called by the defense, and perhaps from the nature of his recent employment, more likely to be familiar with the movements of the tides and currents in the locality referred to, than most of those expert witnesses. He says that while sailing westerly after leaving the *Frederick Gerring* his own schooner was carried by the currents or tides inside the three-mile limit. At the time he observed the approach of the *Aberdeen* Capt. MacKenzie was asked, "Was there any wind at the time you passed the *Gerring*?" A. There was just enough for the *Gerring* to get alongside her net.

Q. With her sails balanced and half a mile away, and the net in the sea, would she be half a mile in the course of an hour?

A. Yes, with the swell and the current.

Q. Further than that, I suppose? A. It may be.

Q. What is your judgment about that? A. That day, according to the way I was carried in myself, she would.

Q. How far did you drift in that day? A. I can hardly say, but I got inside the three miles."

Capt. MacKenzie also states the very important fact, that when he saw the *Aberdeen* approaching the *Frederick Gerring*, he observed that the latter had got within the three-mile limit. When in addition to all this evidence, we consider that of Capt. Spain, the commander of the Canadian Fishery Fleet and his officers, I cannot help feeling that the allegation of the Crown, as to the position of the *Frederick Gerring* when seized is strongly supported. Capt. Spain visited the locality in his own ship and with his chief officers, verified by actual measurements the statement of Capt. Knowlton, unless we are to assume that the latter officer and his subordinates on board the *Aberdeen* were guilty of the most gross and criminal negligence in noting the courses on which their bearings and cross bearings were based, the point of intersection fixed by Capt. Knowlton and verified by Capt. Spain,

must be correct. There is not a particle of evidence to justify such suspicion of such error, and assuming as I do, the correctness of the courses given by Capt. Knowlton, Capt. Spain has shown by the cross bearings taken by himself from these courses and the measurements made by entirely reliable instruments that the locality of the *Frederick Gerring* at the time of seizure was correctly indicated by Capt. Knowlton. That being so, it is immaterial to inquire how the vessel reached that position. She was there found, and found fishing, and the legal consequence must result.

I must not omit to notice the contention of Mr. MacCoy, that admitting the seine to have been thrown and the fish enclosed in it outside of the three mile limit, it is not an offense against the Act to continue to bail the fish from the seine into the vessel after permitting her to drift across the prohibited boundary. I cannot accept his contention that the "fishing" and the "catching of the fish" was completed when the seine was successfully thrown. Further labor is required to save the fish from the sea, and reduce the property to useful possession, and until that be completed the act of fishing and "catching" fish is not in my opinion completed, and in the case before us the crew were in the act of bailing the fish from the seine into the vessel when the seizure was made. It would, I apprehend, be difficult, if not impossible to enforce these Fishery Laws, to which our people attach supreme importance, if those American subjects who so eagerly seek to compete with our people along our shores in this industry, and who are not, I fear, always over scrupulous in the observances of laws of which they have ample notice, should be permitted to plead accident or ignorance to a charge of infraction of these laws. Such a plea, however effective it may be to the executive authority of the country, cannot avail in this court.

There will be a decree condemning the vessel and cargo with costs.

ORDER FOR JUDGMENT.

On the 5th day of August, 1896, before the Honorable James MacDonald, Local Judge in Admiralty for the Admiralty District of Nova Scotia.

The judge having heard this cause, and the witnesses and evidence adduced, and having heard counsel on behalf of the plaintiff and of Edward Morris owner of the above named schooner, her cargo, tackle, rigging, apparel, furniture and stores, pronounced that the said schooner *Frederick Gerring, Jr.*, being a foreign ship or vessel, not navigated according to the laws of the United Kingdom of Great Britain and Ireland, or of Canada, but being a ship of the United States of America, owned by foreigners, did on the 25th day of May, 1896, off Gull Ledge, in the Province of Nova Scotia, within three marine miles of the coast of Canada, fish for mackerel and other fish, and was found so fishing, and that the place where the said schooner *Frederick Gerring* was so fishing and was so found fishing, was in the portion of the Dominion of America, formerly of his late Majesty George the Third, King of the United Kingdom of Great Britain and Ireland, and not lying and included in that part of the southern coast of Newfoundland which extends from Cape Race to the Rameau Islands, nor on the western or northern coast of Newfoundland from said Cape Race to the Quirpon Islands, nor on the shores of the Magdalen Islands, nor on the coast, bays, harbors and creeks, from Mount Joly on the southern coast to Labrador, to and through the Straits of Belle Isle and thence northerly along the coast.

And that said ship or vessel *Frederick Gerring, Jr.*, was so fishing contrary to the provisions of the convention made between his late Majesty George the Third, King of the United Kingdom of Great Britain and Ireland, of the one part, and the United States of America of the other part, made on the 20th day of October, 1818, and contrary to the provisions of the Acts of the Parliament of Great Britain and Ireland, made and passed in the fifty-ninth year of the reign of his late Majesty George the Third, King of the United Kingdom of Great Britain and Ireland, being Chapter 58 of the Acts of the said last named Parliament, made and passed in said year.

And that said ship or vessel *Frederick Gerring, Jr.*, was found so fishing, and to have been fishing in British waters, within three marine miles of the coast of Canada, not included within the limits specified and described in the first article of the convention between his late Majesty King George the Third, and the United States of America, made and signed at London on the 20th day of October, 1818.

And that said ship or vessel *Frederick Gerring, Jr.*, was so found fishing, and to have been fishing, by a fishery officer of Canada on board of a vessel in the service of the Government of Canada, and employed in the service of protecting the fisheries.

And that said ship or vessel *Frederick Gerring, Jr.*, being so found fishing, and to have been fishing, by said fishery officer was by him brought into the port of Halifax, in the Province of Nova Scotia, in Canada.

And that said ship or vessel *Frederick Gerring, Jr.*, was so fishing, and found fishing, and to have been fishing contrary to the provisions of the Revised Statutes of Canada, Chapter 94, made and passed by the Parliament of the Dominion of Canada. And the judge condemned the said ship or vessel *Frederick Gerring, Jr.*, her cargo, tackle, rigging, apparel, furniture and stores, together with the fish, seine, fishing gear, supplies and other property on board said ship or vessel *Frederick Gerring, Jr.*, at the time of her seizure by said fishery officer as forfeited to Her Majesty.

The judge further ordered and it is hereby ordered, adjudged and decreed, that said Edward Morris, who resides at Gloucester, in the State of Massachusetts, in the United States of America, do pay to the plaintiff in this action, Her Majesty Queen Victoria, Queen of the United Kingdom of Great Britain and Ireland, the plaintiff's costs of this action to be taxed, including costs of the commission ordered to issue herein and application therefor.

Dated at Halifax, in the Province of Nova Scotia, in the Dominion of Canada, this 28th day of August, A. D. 1896.

L. W. DES BARRES,
District Registrar.

ORDER EXTENDING TIME.

On reading the affidavit of William F. MacCoy, solicitor for the owner of the above property, and on motion

IT IS ORDERED that the said owner have until the fifteenth day of September, A. D. 1896, to appeal herein, and perfect the same.

Dated at Halifax this 28th day of August, 1896.

(Signed) L. W. DES BARRES,
District Registrar.

NOTICE OF APPEAL.

TAKE NOTICE that the appellants have appealed from the judgment or decision of His Lordship Chief Justice MacDonald, the Local Judge in Admiralty for the Nova Scotia district, filed or given herein on the trial of this cause of Our Sovereign Lady the Queen, Plaintiff, against the ship *Frederick Gerring, Jr.*, her cargo, tackle, rigging, apparel, furniture and stores, Defendant, in the Exchequer Court, Nova Scotia district, which said judgment or decision was filed or delivered on the 18th of August, A. D. 1896, and also appeals from the rule, order or decree granted by said judge thereupon on the 28th day of August, A. D. 1896.

AND ALSO TAKE NOTICE, that the Appellants did on the 31st day of August, 1896, deposit with the Registrar of the Supreme Court of Canada at Ottawa, the sum of fifty dollars by way of security for costs, and said Registrar did set the appeal down for hearing before the said Supreme Court of Canada for the first day of the next ensuing session of said court.

The whole of the said judgment or decision, order or decree, is appealed from.

Dated Halifax, September 1st, A. D. 1896.

WILLIAM F. MACCOY,
Solicitor of Appellant.

To W. B. A. Ritchie, Esq.,
Solicitor of Respondent.

STATEMENTS OF SHIP'S PAPERS CONSTITUTING PLAINTIFF'S
EXHIBIT J. McD. "A."

License in pursuance of title L, regulation of vessels and domestic commerce of the Revised Statutes of the United States, given under the hand and seal of the Collector of Customs at the port of Gloucester, in the district of Gloucester, the 9th day of May, 1896, granting license to the schooner *Frederick Gerring, Jr.*, of Gloucester, Mass., whereof Daniel Doren is master, to be employed in carrying on the fisheries for one year. Burden, 67 tons and 34 hundredths.

Certificate of enrolment in conformity to title L, regulation of vessel in domestic commerce of the Revised Statutes of the United States, given under the hand and seal of the Deputy Collector of Customs at the port of Gloucester, in the district of Gloucester, the 9th day of February, 1893, certifying that Edward Maurice of Gloucester, State of Mass., having sworn that he is a citizen of the United States and sole owner of the ship or vessel called the *Frederick Gerring, Jr.*, of Gloucester, whereof John A. Campbell is at present master, and is a citizen of the United States, and that the said ship or vessel was built at Essex, in the State of Mass., in the year 1870, as appears by Register No. 47, issued at this office, November 29th, 1892, now surrendered, trade changed and after said Registrar having certified the said ship or vessel has one deck and two masts and that her length is 73 6-10 feet, her breadth 21 1-10 feet, her depth 7 7-10 feet, and that she measures 67 34-100 tons net tonnage and that she is a schooner and has a billet head and square stern and that security having been given according to the said title, the said ship or vessel has been duly enrolled at the port of Gloucester.

Said certificate bears an endorsement of change of master dated at Gloucester, May 9th, 1896, signed by the Deputy Collector, stating that Daniel Doren, having taken oath required by law, is at present master.

Clearance signed by Collector of Customs at port of Liverpool, N. S., of the *Frederick Gerring, Jr.*, of Gloucester, 67 tons burden, Doren, Master, from port of Liverpool to the fishery on the banks, with cargo of fishing supplies for mackerel voyage and the necessary sea stores for the voyage.

Dated 21st May, 1896.

SETTLEMENT OF CASE.

Writ of Summons

Evidence, viz:—

Capt. Daniel Doren.

James Gracie.

Harvey L. Bailey.

Henry Burnester.
 John Gough.
 Leander Gaudet.
 John Gammett.
 Alfred Dean.
 Capt. Charles Knowlton.
 Arthur Morin.
 Levi Whitman.
 Christopher Bernett.
 Captain MacKenzie.
 Commander Spain.
 Ernest Kinney.
 William J. Milne.
 Captain Angrove.
 Capt. William Hause.
 Francis Henry.
 Edward Morris.

Ship's Papers, J. McD. "A" Statement of.....
 Chart, J. McD. "B"
 Chart, J. McD. "C"
 Judgment of Chief Justice MacDonald.....
 Decree
 Order enlarging time for appeal
 Deposit receipt for appeal
 Notice of Appeal
 Certificate Registrar

W. B. A. RITCHIE,

For Attorney-General of Canada.

WILLIAM F. MACCOY,

Solicitor for Appellant.

REGISTRAR'S CERTIFICATE.

ACTION FOR FORFEITURE.

I, the undersigned Registrar of the Nova Scotia Admiralty District of the Exchequer Court of Canada, do hereby certify that the foregoing printed document from page 1 to page 61, inclusive,

is the case stated by the parties pursuant to section 44 of the Supreme and Exchequer Courts Act, and the rules of the Supreme Court of Canada, in an appeal to the said Supreme Court of Canada between the ship *Frederick Gerring, Jr.*, her cargo, etc., Defendants (Appellants), and our Sovereign Lady the Queen, Plaintiff (Respondent).

In testimony whereof I have hereunto subscribed my name and affixed the seal of the Nova Scotia Admiralty District of the Exchequer Court of Canada this 8th day of September, 1896.

(Sgd.) L. W. DES BARRES (Seal),

*Registrar of the Exchequer Court, Admiralty Division,
Nova Scotia District.*

EXHIBIT 6.

The Secretary of State to the American Ambassador at London.

No. 1304.

DEPARTMENT OF STATE,
Washington, October 14, 1896.

His Excellency

THOMAS F. BAYARD,
etc. etc. etc.

SIR:

I send you a copy of the papers filed in this Department September 12, 1896, by Mr. Edward Morris, of Gloucester Massachusetts, in relation to the seizure by the Canadian authorities of the fishing schooner *Frederick Gerring*.

The undisputed facts as disclosed by these papers are, that the *Frederick Gerring* cast her nets off Liscombe Island, near the southern coast of Nova Scotia, May 25, 1896, in the presence of the Dominion cruiser *Vigilant*, whose business it was to prevent poaching within the three-mile limit of Canadian territory by vessels of the United States and other nations. The net was lowered after consultation with the Commander of the *Vigilant* and an expression of his opinion that the schooner was on the high seas without the three-mile limit from Liscombe Island. The *Vigilant* steamed away while the nets of the *Frederick Gerring* were in

the water, and a few hours later, before the seine had been hauled, another Canadian police boat, the *Aberdeen*, came along and seized the *Frederick Gerrig* on the charge of fishing within the three-mile limit.

Your attention is especially referred to the opinion of the Admiralty Court in this case, which is among the documents enclosed. From the recital of facts given by the Judge, the inference is conclusive that the *Frederick Gerrig* was outside the limit when she cast her nets but had drifted within the limit before hauling it. The Court held that this was a technical violation of the Canadian Fishery Laws, and imposed the penalty of forfeiture upon the vessel. The Court closes the opinion in the following language:

"It would, I apprehend, be difficult if not impossible to enforce "these fishery laws, to which our people attach supreme importance, "if those American subjects, who so eagerly seek to compete with "our people along our shores in this industry, and who are not, I "fear, always over scrupulous in the observance of laws of which "they have ample notice, should be permitted to plead accident or "ignorance to a charge of infraction of these laws. Such a plea, "however effective it may be to the executive authority of the "country, cannot avail in this Court."

There is a plain intimation by the Court that this is a proper case for the exercise of executive clemency, and you are requested to bring the facts to the attention of the Secretary of State for Foreign Affairs and request that the forfeiture of this vessel be remitted, as it is clear from the judgment of the Canadian Admiralty Court setting aside altogether the testimony furnished by the owners of the vessel, that this was merely an accidental and technical infraction of the Canadian statute, committed, so far as any voluntary act of the Master of the Fishing Schooner is concerned, in the presence and with the consent of a Canadian police cruiser. It is not believed that the British Government will permit the penalty imposed by the Court to be enforced against this vessel.

I am, etc., etc.

RICHARD OLNEY.

EXHIBIT 7.

The American Ambassador to the Secretary of State.

No. 873.

EMBASSY OF THE UNITED STATES,
London, *February 26 1897.*

SIR:

Referring to your Instruction No. 1304 of October 14th, 1896, in relation to the seizure by the Canadian Authorities of the United States fishing schooner *Frederick Gerring*, on a charge of fishing within the territorial waters of the Canadian Dominion, I have the honor to enclose herewith a copy of my note to Lord Salisbury on the subject, together with his Lordship's reply thereto of the 20th instant, in which it is stated that a despatch has been received from the Governor-General of Canada reporting that no action can be taken in the matter by the Dominion Government pending the judgment of the Supreme Court, to which the owner of the vessel has appealed, and that the case has already been argued before the Supreme Court, and that it is probable that the decision will be given in the course of this month.

I have the honor to be,

Sir,

Your obedient servant,

T. F. BAYARD.

Enclosures.

1/873 Copy—Mr. Bayard to Lord Salisbury—Nov. 6/96.

2/873 “ Lord Salisbury to Mr. Bayard—Feb. 20/97.

The Honorable

RICHARD OLNEY,

Secretary of State.

[ENCLOSURE No. 1/873.]*The American Ambassador to Lord Salisbury.*EMBASSY OF THE UNITED STATES,
London, *November 6th, 1896.*

MY LORD:

Under instructions just received from the Secretary of State of the United States, I have the honor to present, for your Lord-

ship's favorable consideration, a case wherein Mr. Edward Morris, of Gloucester, in the State of Massachusetts, the owner of the fishing schooner *Frederick Gerring, Jr.*, a citizen of the United States, appears to have suffered very great hardship and injury at the hands of the Authorities of the Dominion of Canada, and for which I believe Her Majesty's Government will not fail to grant him relief.

In the documents, of which I have now the honor herewith to enclose copies, a case of great hardship is fully disclosed, which plainly calls for the equitable interposition and relief by the Executive Authority, as is suggested in the closing paragraph of the opinion of the Admiralty Judge at Halifax, in whose court the decree of forfeiture was pronounced.

A clear and succinct statement of the circumstances under which the seizure of the vessel in question was made, and of the reasons for confidently anticipating relief at the hands of Her Majesty's Government, from the harsh technicality, upon which the decree of condemnation is placed by the Judge, are contained in an Extract from the Instruction received by me from the Secretary of State, a copy of which is enclosed herewith and craving your Lordship's reply, and attention thereto.

I have the honour to be, &c.

(Sd.) T. F. BAYARD.

The Most Honorable

THE MARQUIS OF SALISBURY, K. G.,

&c., &c., &c.

[ENCLOSURE No. 2/873.]

Lord Salisbury to the American Ambassador.

FOREIGN OFFICE,
February 20th, 1897.

YOUR EXCELLENCY:

Referring to my letter of the 31st of December, relative to the seizure of the United States fishing vessel *Frederick Gerring*, on the charge of fishing within the territorial waters of the Canadian

Dominion, I have the honor to inform your Excellency that a despatch has been received from the Governor-General of Canada reporting that no action can now be taken in the matter by the Dominion Government pending the judgment of the Supreme Court, to which the owner of the vessel has appealed.

It is stated that the case has already been argued before the Supreme Court, and that it is probable that the decision will be given in the course of this month.

I have the honor to be &c.,

(Sd.) SALISBURY.

His Excellency,

THE HON. T. F. BAYARD,
&c., &c., &c.

EXHIBIT 8.

Edward Morris to the Secretary of State.

GLOUCESTER, MASS., *March 29, '97.*

HON. JOHN SHERMAN,

Dear Sir: As I am owner of the Schr. *Frederick Gerring*, which was seized by the Canadian Government last May, thought I would write you about her.

The case was tried in the Supreme Court at Ottawa the first of November and they have not reached a decision yet. This case has been up four times since then and been postponed. I see, now they have postponed it until the first of May again and I don't know as ever they will reach a decision. My lawyer and myself are getting pretty well discouraged over it.

After the case was tried in the Admiralty Court at Halifax I had an interview with Sec. Olney and he advised me to appeal the case.

I told him they had treated me so badly in the Courts at Halifax by putting every obstacle in my way that I thought they would do the same in the upper courts.

I also told him it would cost Five Hundred Dollars.

He said not to let Five Hundred Dollars stand in my way of appealing this case.

I told him the vessel was to be sold in two days' time.

They had only given me fifteen days to appeal in, whereas they should have given me thirty days.

He stopped the sale of the vessel and the case was appealed.

This vessel has been laying there so long she won't be good to anyone in a little while and her seines and boats will be all spoiled.

They let her trip of mackerel stay on board of her until they were spoiled and only brought half the value when they sold them. In fact, they have never taken care of anything.

There is no use of my telling all the particulars of the case, as Sec. Olney looked them over and told me to send them to Washington, and they are all there now.

It is evident they have no case against the vessel or they would have decided it long ago. She was seized over six and one-half miles from the mainland.

This is hard on me, as I lose between seven and eight thousand dollars, besides the whole year's earnings of the vessel, and as I am a poor man it has just about ruined me. It has hurt my credit and damaged me every way.

I am fifty-three years old and have now got to go fishing again in order to make a living.

In fact, this is a clear case of piracy.

There is no doubt but what they will put it off again the first of May, as I think they will wait until the Behring Sea Claim is settled.

I sent to Washington a copy of what Chief Justice Strong of Ottawa said. The decision of the Admiralty Court was wrong and the Crown should make a clear case and discharge the vessel.

You will see that even their own paper think it unjust the way they are detaining this case. The piece enclosed is a cutting from the Halifax "Echo."

You would think it impossible that people could act so prejudiced. Their Gov. Officers will swear to anything to try to forfeit the vessel.

I hope you will be kind enough to look into this.

Yours respectfully,

EDWARD MORRIS.

(G. E. MORRIS.)

EXTRACT FROM THE *Halifax Echo*.

[Enclosure with Edward Morris' letter of March 29, 1897.]

ROTTING AT HER WHARF.

SCH. *Frederick Gerring, Jr.*, STILL TIED UP AWAITING THE
DECISION.

A writer in the *Halifax Chronicle* thus speaks concerning the case of sch. *Frederick Gerring, Jr.*:

"The tardiness of justice or at least how slow our courts of law handle matters is exemplified in the case of the *Frederick Gerring, Jr.* I had almost forgotten the seizure, until taking a stroll on the Marine and Fishing wharf a few days ago, I saw the schooner tied up in one of the docks.

"On or about the 25th of last May, she was seized and brought to Halifax, and in compliance with the law, she was stripped and handed over to the Admiralty court. Nearly a year has come and gone and the case rests undecided in the Supreme Court of Canada, while the ship, totally valueless to the owner, gradually decays. Her cargo has no doubt long before this become worthless.

"The *Gerring* was condemned by the Chief Justice of the Supreme Court of Nova Scotia and then the case was appealed, but it seems like a hardship on the owner, having to wait such a length of time since that appeal, which was about six months ago, for a decision.

"Apart from the question, whether she was guilty of violating the law or not, it is hard on the owner to have to be in suspense, and also out of pocket as a consequence of the seizure, and the delay in giving judgment. It would be quite different if, when the vessel was seized, her owner was allowed to give bonds equal to her value and then use her pending the decision of the courts, which if unfavorable would mean a forfeiture of the bonds."

EXHIBIT 9.

SUPREME COURT OF CANADA.

THE SHIP *Frederick Gerring, Jr.* (Defendant), APPELLANT,
and
HER MAJESTY THE QUEEN (Plaintiff), RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA, ADMIRALTY DISTRICT OF NOVA SCOTIA.

APPEAL from the decision of the Exchequer Court of Canada, Admiralty District of Nova Scotia,¹ which decreed that the ship, her cargo, &c., should be forfeited with costs.

The action was brought against the American fishing schooner *Frederick Gerring, Jr.*, her cargo, tackle, rigging, apparel, furniture and stores for the condemnation and forfeiture of the same, the ship having been arrested for the violation of the treaty or convention of 1818 between Great Britain and the United States of America, and of the statutes 59 Geo. III. (Imp.) ch. 38, entitled "An Act to enable His Majesty to make regulations with respect to the taking and curing of fish on certain parts of the coast of Newfoundland, Labrador, and His Majesty's other possessions in North America according to a convention made between His Majesty and the United States of America;" and R. S. C. ch. 94, entitled "An Act respecting Fishing by Foreign Vessels, and the Acts in amendment thereof;" upon the hearing before the local judge of the Admiralty District of Nova Scotia a decree was made declaring the forfeiture with costs, and from this decree the owners have taken the present appeal.

The substance of the treaty and of the above mentioned Acts are set out in the report of the decision of the Exchequer Court.

The vessel was seen fishing off Gull Ledge and Liscombe Light on the coast of Nova Scotia on the 25th May, 1896, about half a mile outside of the prohibited line by the captain of the Canadian fisheries cruiser *Vigilant*, her seine had been thrown and was then pursed up and she was going up to her boat which was attached

¹5 Can. Ex. R. 164.

to the seine in which a quantity of fish was enclosed. The *Vigilant* passed on without disturbing her operations, as her captain had decided from the bearing he then took that the *Gerring* was beyond the three-mile limit. A couple of hours afterwards the *Gerring* was seized by the Canadian steam cruiser *Aberdeen* at a point within three marine miles of the Nova Scotia coast for the offence of fishing within the proscribed limits. At the time of the seizure the crew of the *Gerring* were engaged in bailing fish out of the seine and claimed that these fish had been caught when the seine was cast outside of the prohibited line, and that if they were at the time of seizure within the three-mile limit (which they denied), they had drifted across the line after the fish had been taken in the seine, and further, that even if they were within the three-mile zone, it was no offence against the treaty or the statutes to continue to bail the fish from the seine into the vessel after she had drifted across the prohibited boundary, for the "fishing" and "catching of the fish" had been completed when the seine was successfully thrown, outside.

The trial judge found that the bearing taken showed that the vessel was within the prohibited line when seized, and that the operation of "fishing" or "taking fish" was then still being carried on, the process being incomplete until the fish had been bailed into the vessel and saved from the sea, thus being reduced into useful possession.

MacCoy, Q. C., for the Appellant.

Newcombe, Q. C., for the Respondent.

THE CHIEF JUSTICE: For the reason given by Mr. Justice Gwynne I am of opinion that this appeal should be allowed.

GWYNNE, J.: This appeal must, in my opinion, be allowed with costs. The evidence is conclusive, and indeed it is not disputed, that the ship *Frederick Gerring, Jr.*, on the day upon which she was seized, had laid her seine for the purpose of catching fish in the sea well outside of the line constituting the limit of three marine miles from the coast of Nova Scotia, and that while outside of such limit she had caught a quantity of fish in the seine, and had secured them there by hauling up the seine and tying the ends so as to enclose the fish, pursing the net as it is called, and

attaching it with the fish so secured in it to the vessel. All this was done outside of the three-mile limit, and while inside of it the persons in charge of the vessel proceeded to bail the fish out of the seine into the hold of the vessel. While engaged in this operation she was seized. There was a question raised as to whether the place where she was seized was in point of fact inside of the three-mile limit, but assuming it to have been, there was no doubt that the vessel had drifted to that position while the persons in charge of her were engaged in bailing the fish out of the seine into the hold, and unless the being engaged in that operation constitutes "fishing or taking fish within the three marine miles of the coast of Nova Scotia" there is not a particle of evidence that the vessel had been, or was then, "fishing for fish" in Canadian waters within the three marine miles of the coast, or that she was then preparing to fish in such waters. To construe the act of bailing fish out of a seine in which they had been caught and secured outside of the three mile limit, into the hold of a vessel, which after the fish had been so caught, and while the parties employed on her were so securing the fish by transferring from the seine to the hold of the vessel, had drifted by force of currents inside of the three-mile limit, as a violation of the treaty rights of the citizens of the United States, or of the Acts of Parliament passed in relation thereto, would be altogether too hypercritical a construction to put upon the treaty securing such rights and the said Acts of Parliament, and can not, in my opinion, have the sanction of this court, and is not warranted by any of the cases referred to on the argument.

The case of *Young v. Hichins*¹ has no bearing upon the present case. The plaintiff there complained in trespass for that the defendant had seized and disturbed a fishing seine and net of the plaintiff thrown into the sea for fish, wherein, as alleged in the declaration, the plaintiff had taken and enclosed, and then held enclosed in his own possession, a large number of fish, and the defendant threw another fishing seine and net within and upon plaintiff's seine, and prevented plaintiff from taking the fish so taken and enclosed out of his seine, as he otherwise could have done. It appeared in evidence that the plaintiff had only thrown

¹6 Q. B. 606.

his net partially round the fish in question, leaving a space of about seven fathoms open which the plaintiff was about to close up when the disturbance complained of took place. Until this open space should be closed the fish round which the net was only partially drawn were at large in the sea, and so could not be held to have been taken and enclosed and then held enclosed in the plaintiff's possession, as averred in the declaration. As to the fish, therefore, it was held that the plaintiff had them not in his possession, and could not therefore maintain trespass as regarded them, but for the trespass to the seine he recovered twenty shillings.

Now in that case it was not held that if the fish had been *secured* in the seine the action of trespass would not have lain; much less can that case be an authority for holding that the fish taken in the seine set by the *Gerring*, which with the fish secured in it was hauled up and pursed, as it is called, and attached to the vessel, were not so in possession of the owners of the *Gerring* as to give them an action of trespass against any one who should bring a vessel alongside of the seine and either put the fish therein into such vessel, or cut the seine and let the fish fall into the sea. But the question with which we have to deal is whether or not the officers of the Dominion Government had any right to seize the *Gerring*, with or without the fish so secured in the net so hauled up and pursed and attached to the vessel as aforesaid. And this they had no right to do unless the fact of a vessel which had been engaged in fishing in the open sea, and in the seine laid by which in the open sea fish had been caught, which fish while the vessel was still in the open sea were secured by the net being hauled up, the ends tied so as to secure the fish, and so pursed as it is called, had been attached to the vessel, which afterwards by force of the winds or currents was driven or drifted into Canadian waters within the three-mile limits, can by the terms of the laws of the Dominion of Canada be held to have subjected the vessel to seizure as a vessel then engaged in fishing for fish in Canadian waters, and in my opinion the laws of the Dominion are open to no such construction.

SEDGEWICK, J.: There can be no question as to whether the vessel, at the moment she was seized by the *S. S. Aberdeen* was within three marine miles of the coast of Nova Scotia. The

learned Local Judge in Admiralty for the Nova Scotia Admiralty District, before whom the case was tried, and who had before him a number of witnesses as well for the Crown as for the defence, came to that conclusion, and we must not disturb his finding unless it is manifest that he is wrong. In my view it is manifest that he is right. The direct evidence, the evidence of every witness who made any examination, and who was in a position to testify as to the result of his own actual observation, was in favour of the Crown. The three officers of the seized steamer testified that the *Gerring*, when seized, was within the three-mile limit. None of the witnesses who formed part of the crew of the seized vessel ventured to assert, except as a matter of opinion unsupported by actual observation, anything to the contrary. Expert evidence, however, was called on behalf of the defence for the purpose of showing that if at three o'clock in the afternoon the seized vessel was outside the three-mile limit, it would be impossible for her to be within that limit at the time of the seizure. This evidence was based upon a number of hypotheses which may or may not have been accurate, but its legal effect or tendency was, in my view, to prove, not that the *Gerring* was outside of the three-mile limit at the time of the seizure, but that she was continuously within it from the time the seine was set down to the time that the seizure was made, and that Captain MacKenzie was mistaken in his opinion as to the exact position, both of his ship and the *Gerring* in the early part of the day. We must, however, take for granted that at the time when the seine was set out the *Gerring* was outside the three-mile limit, and for the purpose of this opinion I will assume that to have been the fact.

The main question, therefore is: Assuming the seine to have been set out and the mackerel encompassed by it outside the territorial limit, and that the vessel with the seine subsequently drifted, or came, no matter how, to a point within the three-mile limit, and that at such point her crew were found bailing the fish from the seine into the vessel, was the *Gerring*, or those controlling her, doing an act which would justify her seizure and condemnation?

By the convention of 1818 the United States renounced forever

any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbours of His said (Britannic) Majesty's Dominions in America.

By the Imperial statute¹ it was enacted that if any foreign vessel should be found fishing, or to have been fishing, or preparing to fish, within three marine miles of such coasts, bays, creeks, or harbours, she should be forfeited, etc. And by our own Act² it is enacted that if a foreign ship (unlicensed) has been found fishing, or preparing to fish, or to have been fishing in British waters within three marine miles, etc., she shall be forfeited. The question, therefore, is not strictly whether under the treaty the *Gerring*, at the time of the seizure, was "taking" fish, but whether under the Imperial as well as the Canadian statute, she was "fishing." In my view there is not, and it never was intended that there should be, any difference between the two, but strictly speaking it is the statute which governs; and the vital question, therefore, is: Was she "fishing" at the time of the seizure, or was she *not*?

It is, I think, desirable that we should have a clear understanding as to what the crew of the vessel were actually doing at the time of the seizure. It is, I suppose, a matter of common knowledge what constitutes purse seine fishing, but a brief description of it, as I understand it, may not be out of place.

As to the kind of seine used in this case the evidence is not clear, but it would probably be from 150 to 175 fathoms in length and from 10 to 12 fathoms in depth. It is rectangular in shape. When a school of mackerel has been descried the captain, accompanied by most of the crew, proceeds as quickly as possible in the seine-boat to encircle the school with the seine, while the cook is left to look after the vessel. The seine is paid out by two of the men in the seine-boat. As soon as the first end of it has been thrown overboard two of the crew, who did not get into the seine-boat, row up to the spot in a dory, and seize the buoy attached to the cork-line at the end, which they hold until the seine-boat has made a circle. The seine is kept in proper position by means

¹59 Geo. III. ch. 38.

²R. S. C. ch. 74, Sec. 3.

of sinkers attached to the bottom and of floats attached to the top. When the two ends of the seine are come together it is more or less cylindrical in shape, the fish being surrounded by the cylinder. At the bottom, and running all round it, is a rope, called the purse line, both ends of which are secured by the men in the seine-boat. After both ends of the seine have been brought together, one end of this line is taken by one portion of the crew in the boat and the other end by the remainder. By pulling this rope in opposite directions, the net, which until now is cylindrical in shape, is closed at the bottom, such closing constituting what is known as the "pursing" of the seine, the result being to make it assume the form of a bag or purse, while the school of mackerel, or such portion of it as has been entrapped, are enclosed within it. The fishing vessel is then brought alongside the seine, and the latter still floating in the water, with the fish therein enclosed, is attached to the vessel fore and aft. The area of the enclosure is circumscribed as may be necessary by gathering in the ends of the seine, and thus confining the fish to a more limited space in order to render easier the operation of bailing them out. In nautical language this process of circumscribing the area of the enclosure is known as "drying up" the seine. The fish are then bailed out of the seine on board the vessel. The operation of setting the seine and of pursing it up is over in about ten or twelve minutes. Hours, in the present case, at least two, are occupied in the operation of taking the fish from the seine, the time being dependent upon various causes, but mainly, I suppose, upon the quantity of fish in the seine. At no time during any of these operations is the vessel or seine at anchor; the vessel lays to, and the whole drifts at will with the tide or current.

As I understand the argument of the appellant, it is contended that, the fish having been surrounded by the seine, and enclosed therein outside the three-mile limit, the act of "fishing" was then complete, and that anything done by the crew of the vessel after the pursing up process could not be called "taking fish," or "fishing" within the meaning of the convention or of the statutes referred to. I do not think it necessary to refer at length to the canons of construction which govern in a case like the present. Penal statutes, of course, must be construed strictly. When one is accused of having violated a statute it is clear that he must un-

mistakably be brought within its provisions; there must be no doubt about it. But we must not do violence to ordinary language; we must not take from plain words their ordinary and universal meaning for this purpose. The question is whether this vessel was "fishing," when, for two hours or more, her crew were bailing, or scooping out, by means of a dip-net, from the area of water surrounded by the seine, the one hundred and thirty barrels (more or less) of mackerel which they finally secured. The act of fishing is a pursuit consisting, not of a single but of many acts according to the nature of the fishing. It is not the isolated act alone either of surrounding the fish by the net, or by taking them out of the water and obtaining manual custody of them. It is a continuous process beginning from the time when the preliminary preparations are being made for the taking of the fish and extending down to the moment when they are finally reduced to actual and certain possession. That, at least, is the idea of what "fishing," according to the ordinary acceptance of the word, means, and that, I think, is the meaning which we must give to the word in the statutes and treaty. There is here, as I conceive, no need for interpretation, and the fundamental canon is: "Do not interpret where there is no need of interpretation." If when the *S. S. Aberdeen*, moving eastward saw the *Gerring*, a mile and three-quarters from shore, engaged as I have described, some of her crew bailing fish from the water, others assisting to confine the fish into smaller and smaller compass, so as to be more easily secured; others driving the fish within the ambit of the dip-net by splashing with their oars in the water; others sorting and dressing and otherwise treating the fish, the question were asked: "What is the vessel doing?" Would not the inevitable answer be: "She is fishing?" and if any one on board could be found bold enough to affirm that she was not "fishing," that that operation was completed hours before, when the seine was pursed up and the mackerel therein enclosed, would he not be set down as either ignorant of language or as bereft of reason?

Even if the question depended upon the "taking" of the fish, I do not understand that fish are "taken" when they are enclosed in a seine, or encompassed about by it. They are still alive in their native element, possibly with few but still with some chances of escape. As I understand, they are never all taken; numbers

escape. There is the contingency of the seine breaking, or the fish falling from the dip-net between the seine and the vessel, or of a storm arising and the vessel breaking away from the seine altogether. And there are, doubtless, many other chances of escape. The "fishing" is not over—although there may be a moral certainty that the fish will eventually be secured—until *as a fact they are secured*. If the other view is the sound one, then the hardy fishermen along our multitudinous coast waters and tidal rivers *are* "fishing" when at even-tide they set their nets, but they are *not* "fishing" when in the morning, with nets full to overflowing, the fish not only enmeshed but dead, they bring them on board and stow away their fare. I *am* "fishing" while I am whipping the water with my line, "fishing" also when the salmon rises and takes the fly, but, having hooked him, I am *not* "fishing" when for minutes, or perhaps hours, I play him in the water, weaken him before the final tragedy, and at last land him dead upon the sward. The negro boys referred to by Fraude in his "English in the West Indies" (p. 137), were "fishing" when they were placing the net in the water and surrounding the fish with their improvised contrivance, but when the cord was drawn and the net closed, they were *not* "fishing" while they were hoisting them into the boat and carrying them ashore. And when more than eighteen and a half centuries ago seven men stood out in their little craft from the shores, on the waters of the Galilean Sea, they went afishing. They were "fishing," though all night they caught nothing; "fishing" too, when in the morning at the behest of their Master they cast their net at the right side of the ship; but they were *not* "fishing" when with help from friends they dragged their net all unbroken ashore, filled with a "multitude of fishes."

Neither in my view, as I have already suggested, can it be said that these fish were "taken," if anything depended upon that, until they were actually on board the ship. True, they were encompassed by the net; true, there was, I admit, almost a certainty that they would ultimately be secured, but they were not yet "taken." A city may be besieged, even beleaguered, by an invincible host, there may be a strong probability, nay, even an absolute certainty that the siege will be successful, but the city is not

yet "taken." Storm and stratagem may yet be necessary before the final overthrow, and not until that catastrophe is the "taking" consummated. It was only after Troy had been besieged for ten weary years that the Greeks succeeded, and then by wile, in taking her. It was only then that "*Ilium fuit*" became an historic fact.

The treaty itself affords, I think, strong evidence against the position contended for. The United States thereby renounced the liberty to "take, dry or cure" within Canadian waters. The framers of the treaty at least seemed to have thought that taking and drying, or taking and curing, were consecutive acts embracing all the natural operations of the fishing avocation. Were there a number of acts after the taking, and before the curing or the drying—intercalary or intermediate processes, acts that were not "fishing" but that had a relation to fishing, such as the acts of bailing, etc., to which I have referred—that might legally be done in domestic waters? They evidently intended (whether or not that intention has been sufficiently expressed) to prohibit in British waters the doing of anything in connection with fish that would make it an article of commerce, while the word "taking" was intended to include all operations between the throwing of the line or the casting of the net, and the processes directly necessary to prepare or preserve the fish for human food.

The question as to whether this vessel was "fishing" at the time of the seizure must, I submit, be determined altogether irrespective of the position of the vessel at the time of the seizure; for, wherever she was, she was "fishing" or she was *not* "fishing" within the meaning of the statute. The quality of the act cannot be determined by any consideration of position or location. She was "fishing" or *not* "fishing" in that spot, whether it was three or three hundred miles from land, its relative position *quoad* the shore being immaterial.

Nor is the question to be determined upon any consideration as to legal property or legal possession. It is not necessary to determine at what particular point of time, or at the conclusion of what particular operation, did the fish become the property of the catchers. I may have an exclusive right of fishery, a property right to the fish of a particular stream, but whether I am or am not "fishing" does not and cannot depend upon any question as to

my ownership. The statute has no regard to ownership or possession; it is the act of fishing without reference to the ownership of the thing fished for that it prohibits.

Nor does the fact that the master and crew of the *Gerring* may have been ignorant of their whereabouts, may have had no desire or intention of trespassing upon Canadian territory or of violating Canadian law, affect the legal question. We are not dealing here with the master or crew. Neither the treaty nor the statute purports to punish them for violating the treaty's provisions. In the eye of the statute the vessel itself is the offender. The statute gives to it a moral consciousness—a personality—a capacity to act within or without the law, and imposes upon it the liability of forfeiture in the event of transgression. In the enforcement of fiscal law, of statutes passed for the protection of the revenue or of public property, such provisions are as necessary as they are universal, and neither ignorance of law, nor, as a general rule, ignorance of fact, will prevent a forfeiture when the proceeding is against the thing offending, whether it be the smuggled goods or the purloined fish, or the vehicle or vessel, the instrument or abettor of the offence. If I bring dutiable goods into Canada without paying duty, I am liable to penalty although ignorant of the tariff. The goods themselves, endowed by law as they are with faculty and right of speech, cannot plead my ignorance either of law or fact as a bar to forfeiture.

According to my understanding of my own language, according to my idea as to what is the universal meaning of the term "fishing," no one, it seems to me, would describe the acts being done by the *Gerring* at the time of seizure by any other term than that of "fishing"; nor do I feel called upon out of deference to any supposed canon of strict construction—a rule as often honoured in the breach as the observance—to emasculate language, to filch from that word—a word which, with recognized variations, appears to be common to all the Aryan races—all but a fraction of its meaning, confining it to a petty segment of that wide circumference of idea that has belonged to it for centuries.

An additional consideration is not without weight. In order to the success of the appellant, a modified, secondary or circumscribed meaning must be given to that word "fishing." To excuse, much more to justify, a deviation from its primary meaning,

there must be overwhelming and absolutely conclusive considerations. But no considerations at all—not even unwarrantable ones—are forthcoming. Why do violence to the mother tongue and shock the intelligence of the ordinary English student, why give aid and comfort to those profane babblers who reiterate the fiction that judicial tribunals are accustomed deliberately to defeat the legislative intent by constructive canons of their own devising, in order to give immunity to a vessel engaged in a business that, according to present light and present scientific knowledge, may be characterized as nefarious, a business, the tendency of which is to annihilate for all time the fish-food supply of this continent, a business, too, which, so far as Canadian waters are concerned has been prohibited and criminalized?¹ We Canadians are in a sense the world's trustees. The North American fisheries have been committed to our guardianship, not for ourselves alone, but for posterity; not for Canada alone, but for humanity. They are the most prolific in the world. One can only imagine, he cannot measure, their potentiality of blessing to mankind, and the Canadian Parliament has recognized its obligation to conserve them for the benefit of future generations. That is the declared policy of the Canadian people, and that too is the desire and the proposed policy (so far as I am informed) of the United States Government. Purse seining is inimical to that policy. It means, not a reasonable use of, or participation in, the deep sea fisheries or their natural annual increment, not their preservation, but their annihilation, their absolute destruction for all time; in familiar words, "the killing of the goose that lays the golden egg." The history of the United States fisheries on the Atlantic seaboard proves this, and it was the conviction of it that induced our Parliament, as a partial remedy, to pass the Act of 1891, above referred to. To allow this vessel to escape would be to that extent to defeat the beneficent preservative policy of the Canadian Parliament as evidenced by the statute, as well as to point out a way by which in many cases its penal consequences might be avoided. Nothing but overmastering considerations would justify that.

There is another ground upon which the judgment appealed from may be supported. Neither the Imperial statute, nor the

¹See "Fisheries Amendment Act, 1891," 54 and 55 Vict. ch., 43.

Canadian statutes up to 1886 appear to cover by way of penalty all the acts prohibited by the convention of 1818. Although they penalize other acts with a view to its enforcement they appear to have dealt only with "fishing" or "preparing to fish." The treaty forbade the drying or curing of fish, and contained a proviso that an American fishing vessel might enter bays and harbours for the purpose of shelter and repairing damages, of purchasing wood and of obtaining water, *but for no other purpose whatever*. The question had arisen as to whether the purchase of bait was a "preparing to fish" within the meaning of the statutes. It had been decided in the affirmative in Nova Scotia in the case of the *J. H. Nickerson*, and in the negative in New Brunswick in the case of the *White Fawn*, the first decision having been subsequently followed in the Nova Scotia case of the *David J. Adams*. In order to set at rest this question the statute law in force in that year was changed by the Act 49 Vict. ch., 114 (1886), which expressly provided in addition that if a foreign vessel (unlicensed) has entered within three marine miles of any of the coasts, bays, creeks or harbours of Canada for any purpose not provided by treaty or convention, or of any law of the United Kingdom, or of Canada for the time being in force, such vessel should be forfeited. It is worth noting that this statute is in a special sense an enactment of Her Majesty, carrying with it all the dignity and prestige of Imperial law. It was an Act, not assented to by the Governor General, but reserved for the signification of Her Majesty's pleasure, and it was subsequently, by Imperial order in council, solemnly and after due consideration approved by Her Majesty.

If, therefore, the *Gerring*, at the time of the seizure, was "unlawfully" where she was, she became liable to forfeiture. The Canadian Act, it will be noted, does not in this relation apply to bays and harbours only, but coasts as well. The convention specifies the circumstances and all the circumstances under which a foreign fishing vessel may enter into our territorial waters, viz., for wood, water, shelter or repairs, *and for no other purpose whatever*. For what purpose was the *Gerring* where she was when seized? Certainly for none of these purposes, but for the sole purpose of securing the fish inclosed by her seine. She was there, therefore, clearly in contravention of the terms of the convention. Is there any law either in the United Kingdom or in Canada which

authorized her presence there? There is certainly no Canadian statute law on the subject, and there is now no commercial treaty, other than the convention of 1818, between Great Britain and the United States which gives to American vessels the right to enter Canadian territorial waters for any purpose whatever. According to international usage the only purpose for which the ships of one nation may enter the territorial waters of another nation, at all events during war, is for refuge or asylum. If there is any right beyond this it must be a right secured either by statute or treaty. Up to 1830 the United States had no commercial, as distinguished from fishing, privileges for any of its vessels in the ports of the British North American possessions. In a letter from Mr. Daniel Manning, the Secretary of the Treasury of the United States, to the Hon. Perry Belmont, dated February 5th, he says:

I am advised and concede that up to President Jackson's proclamation of October 5th, 1830, set forth on page 817 of the 4th volume of the United States Statutes at Large, this Government *had not even commercial privileges for its vessels in Canadian ports*. We had such privileges as colonists, we lost them as colonists, we regained them in 1830 by an arrangement of legislation finally concerted with Great Britain, which was the result of an international understanding that was in effect a treaty, although not technically a treaty negotiated by the President, ratified by the Senate, signed by the parties, and the ratification formally exchanged by them.¹

He says in the same letter:

The treaty of 1818 secured to our fishermen what, up to that time, they did not have as a treaty right, which was, admission to Canadian bays or harbours for the purpose of shelter, and of repairing damages therein, or purchasing wood and of obtaining water, "*and for no other purpose whatever.*" As colonists we had those rights, but as colonists we lost them by just rebellion.²

By reference to the provisions of the treaties of 1794 and 1815, it will appear that while the subject of commercial intercourse

¹49th Congress, 2d Session, No. 4087, p. 20.

²*Ib.*, p. 19.

between the United States and the British possessions in Europe is expressly dealt with, the British possessions in America are not provided for. The treaty of 1794, as to commercial privileges, provided that it should

not extend to the admission of vessels of the United States into the seaports, harbours, bays or creeks of His Majesty's said territories in America.

When the convention of 1818 was framed an attempt was made to place the commercial intercourse between the two countries upon a permanent basis, but that attempt proved abortive. It was not until 1830 that the negotiations carried on by President Jackson, through Mr. McLane on the part of the United States, and Lord Aberdeen on the part of Great Britain, resulted in an arrangement which, up to the present, governs the commercial intercourse between the United States and His Majesty's British North American possessions. This is embodied in a proclamation of the President, and in an order in council of the British Government.

The proclamation, after recital, directs that :

British vessels and their cargoes are admitted to an entry in the ports of the United States, from the islands, provinces and colonies of Great Britain, on or near the North American continent, and north or east of the United States.¹

The order in council is in the following terms :

And His Majesty doth further, by the advice aforesaid, and in the pursuance of the powers aforesaid, declare that the ships of and belonging to the United States of America may import from the United States aforesaid, into the British possessions abroad, goods, the produce of those states, *and may export goods from the British possessions abroad*, to be carried to any foreign country whatever.²

This latter order in council of 1830 was passed under the authority of the Imperial Act of 1825, ch. 114, but a perusal of

¹Congressional Debates, 1830, p. CXCI.

²*Ibid.*, p. CXCHII.

that Act, as well as of the order in council, will show, I think, without doubt, that there was no intention on the part of Parliament in passing the Act, or of His Majesty in making the order in council, to in any way repeal or modify the treaty of 1818, or the Imperial Act providing for the enforcement of its provisions, and the Imperial Act last referred to, and the order in council above quoted, is the only basis upon which any claim of right on the part of the *Gerring* to do what she did in the territorial waters of Canada can stand. The *Gerring*, therefore, was found in British waters for a purpose not authorized by law, and consequently, under the express provisions of our own statute became liable to forfeiture.

There is another ground, already incidentally referred to, justifying the forfeiture of this vessel, though not of her cargo, and as this is *par excellence* a case of purse seining, it is just as well to deal with and settle the question now. Section 1 of the statute of 1891, above referred to, is as follows:

1. Section fourteen of "The Fisheries Act" is hereby amended by adding thereto the following subsection:

15. The use of purse seines for the catching of fish in any of the waters of Canada is prohibited, under a penalty for each offence of not less than fifty dollars, and not exceeding five hundred dollars, together with the confiscation of the vessel, boat and apparatus used in connection with such catching.

Of course the same controversy may arise as to the meaning of the word "catching" here as has arisen in respect to the words "fishing" and "taking fish," but if I am right as to these latter words, it follows that "catching" includes "bailing," and that as this "bailing" was done within the territorial waters by the use of the seine the case is within the statute. But the words "in any of the waters of Canada" qualify, according to proper grammatical construction, not the word "catching," but the word "use," and it is the *using* in Canadian waters of a purse seine that is prohibited. There was such a "user" here, and forfeiture is the consequence.

In my judgment the appeal should be dismissed with costs.

* * * * *

KING, J.—This is an appeal from a judgment in the Admiralty Court condemning the American fishing schooner *Frederick Gerring, Jr.*, for violation of the fishery laws.

According to the testimony of the seizing officer the vessel when seized was about a mile and a half outside of Gull Ledge, on the coast of Nova Scotia. Her crew at the time were engaged in taking mackerel from a purse or bag seine made fast to the vessel.

A couple of hours previously she had been observed by Capt. MacKenzie, of the fishery protecting cruiser *Vigilant*, in the act of going up to her seine boat after the seine had been thrown and drawn together, or pursed. The vessel and her seine boat were then, in Capt. MacKenzie's opinion, about a half mile outside of the three-mile limit. The interval appears to have been wholly spent in taking the fish from the seine. In this operation the sheets are eased off, and headway taken off the vessel to prevent her fouling the seine, or destroying it by too rapid movement through the water; and it was contended for the appellant that it was not possible, in the existing conditions of wind and current, that the vessel could have got inside the limit. This contention assumed the correctness of Capt. MacKenzie's observation respecting the position of the *Gerring* when he saw her, as already stated, and was supported by a substantial body of expert evidence as to the effects of currents, etc. There was, however, evidence of like character the other way, and (what was more material) direct testimony as to cross bearings taken on board the seizing vessel just before the seizure, of certain objects on the land, which, if correct, would show the *Gerring* to have been then, within the limits. It appears also, that the commander of the *Aberdeen*, the seizing vessel, took the reasonable course of endeavoring to show to the master of the *Gerring* the position of his vessel upon his own chart, by bearings taken with his own compass. It is admitted that the seizing officer asked for the compass and chart in order to take the bearings of certain points and indicate them on the chart. There is, however, a difference between the parties as to what took place when the chart was produced. The commander of the *Aberdeen* says that it was in a condition that rendered it useless for the purpose. The master of the *Gerring* took no bearings, and his opinion as to his vessel's position rests

entirely upon the general appearance of the coast to the eye. Capt. MacKenzie's testimony is important, as he places the vessel outside the limits when the seine was thrown. He was not concerned in the seizure, and his observation of the subsequent position of the *Gerring* is entitled to much consideration. During the two hours his vessel appears to have drifted considerably inshore, and he observed the *Aberdeen* steaming up to the *Gerring*, and, at that time, noticed that the latter vessel was then inside the three miles limit. It further appears that there is an indraught amongst the islands along the coast, and we all know that amongst things not fully understood is the cause of the variation in strength of coast currents at different seasons.

The direct testimony in the case was quite sufficient to warrant the conclusions of the learned judge as to the position of the vessel.

The remaining question is whether what the vessel did within the three miles limit was a violation of any of the provisions of the fishery laws. It is to be taken as the fact that when she entered Canadian waters the purse seine had been drawn together inclosing the fish in it. The appellant's contention is that, upon this, the act of fishing or taking fish was completed, and that the *Gerring* was afterwards merely taking on board her own property.

Upon this point MacDonald, C. J., says:

I must not omit to notice the contention of Mr. MacCoy, that, admitting the seine to have been thrown, and the fish inclosed in it, outside of the three-mile limit, it is not an offence against the Act to continue to bail the fish from the seine into the vessel after permitting her to drift across the prohibited boundary. I cannot accept his contention that the "fishing" and the "catching of the fish," are completed when the seine is successfully thrown. Further labour is required to save the fish from the sea and reduce the property to useful possession, and until that be completed the act of "fishing" and "catching fish" is not in my opinion completed.

The evidence is somewhat meagre respecting the operation of taking fish by purse seines. It appears that the seine is about twenty-eight fathoms in depth, and, when drawn together, about twelve or fourteen fathoms. It is set from a boat rowed rapidly around the school of fish, and then drawn together from below in

such a way as to enclose the fish in a kind of bag, the mouth of which is then made fast to the vessel forward and aft, and drawn above the level of the water, and the live fish taken from it by bailing. The setting and drawing of the seine is the work of a short time, but the proper handling of the seine afterwards and getting the fish from it is an operation taking considerable time, in this case two hours.

It is a recognized principle of maritime and international law that every nation has jurisdiction over the waters adjacent to its shores to the distance of a marine league. There is, however, in every other nation, the right to navigate such waters for harmless purposes subject to such supervision as may be deemed necessary to prevent abuse. "It seems to me," says the present Master of the Rolls, in *The Queen v. Keyn*¹—

that this is in reality a fair representation of the accord or agreement of substantially all the foreign writers on international law, and that they all agree in asserting that, by the consent of all nations, each which is bounded by the open sea has a right over such adjacent sea as a territorial sea, that is to say, as a part of its territory, and that they all mean thereby to assert that it follows, as a consequence of such sea being part of its territory, that each such nation has in general the same right to legislate and enforce its legislation over that part of the sea as it has over its land territory. With its own consent, given to all other nations in the same way as they have consented to its right of territory, consent from which neither it nor they can rightly depart without the consent of all, there is for all nations a free right of way to pass over such sea with harmless intent, but such a right does not derogate from the exercise of all its sovereign rights in other respects.

This, it is true, is from a dissentient opinion, but by a declaratory Act, 41 & 42 Vic., ch. 73, the territorial rights thus asserted were declared to have always existed. See also *The Queen v. Dudley*.¹

Upon the close of the war of 1812, and in consequence of a difference of opinion between the governments of Great Britain and

¹² Ex. D. 63 at p. 135.

¹⁴ Q. B. D. 273.

the United States as to the effect of the war upon the continuance of former treaty rights of American fishermen in the waters of His Majesty's Dominion in British North America, the convention of 1818 was concluded, whereby it was (*inter alia*) agreed that within certain limits (chiefly in and about Newfoundland, Labrador, Magdalen Islands, etc.), the inhabitants of the United States were to have forever in common with the subjects of His Majesty the liberty to take fish of every kind, and also the limited right to dry and cure fish in certain bays, harbours and creeks. It was then agreed by the United States as follows:

And the United States hereby renounces forever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry or cure fish on or within three marine miles of any of the coasts, bays, creeks or harbours of His said Majesty's Dominions in America, not included within the above mentioned limits, provided, however, that the American fisherman shall be admitted to enter such bays or harbours for the purpose of shelter or of repairing damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent them taking, drying or curing fish therein or in any other manner whatever abusing the privileges hereby reserved to them.

Then, as to domestic legislation. The Imperial Act, 59 Geo., 3, c. 38, declared it to be unlawful for any person other than a natural born subject of His Majesty in any foreign ship, etc., to fish for, or to take, dry, or cure any fish of any kind whatsoever within three marine miles of any coasts, bays, creeks or harbours whatever in any part of His Majesty's Dominions in America, not included within the limits specified and described in the first article of such convention, and it is enacted that, if any such foreign ship, etc., or any person on board thereof should be found fishing or to have been fishing or preparing to fish within such prohibited limits, such vessels, etc., should be forfeited, etc., provided, however (as in terms of the treaty). that it should be lawful for any fishermen of the United States to enter into any such bays or harbours for the purpose of shelter and repairing damages therein, and of purchasing wood or obtaining water and for no other purpose whatever.

The subject has also been dealt with by the Parliament of Canada, and it is enacted by ch. 94, R. S. C., that any fishery officer concerned in the protection of the fishery (amongst other officers) "may go on board of any vessel within any harbours of Canada, or hovering in British waters within three marine miles of any of the coasts, bays, creeks or harbours in Canada, and may bring such vessel into port. * * * And if such vessel is foreign, and (a) has been found fishing or preparing to fish, or to have been fishing in British waters within the three marine miles of any of the coasts, bays, creeks or harbours of Canada, not included within the above mentioned limits, without a license * * * or (b), has entered such waters for any purpose not permitted by treaty, or convention, or by any law of the United Kingdom or Canada for the time being in force, such ship, etc., shall be forfeited."

The convention of 1818 deals not merely with the catching of fish, but with the entire subject of the rights of American fishermen to the use of territorial waters and adjacent coasts in the prosecution of their enterprise.

The rights and privileges of American fishermen therein are stated affirmatively and negatively. There is the right to take fish in common with British subjects in certain waters, and to dry and cure fish (wheresoever taken) on certain coasts; and, with regard to the remaining waters and coasts, a renunciation of all claim or liberty to take, dry or cure fish; but, along with this, a certain saving, viz.: to enter bays and harbors for the specified purpose of shelter, repairs, purchasing wood and obtaining water, but for no other purpose whatever.

This seems not only not to permit, but, by necessary implication to exclude, the using of territorial waters (other than those in which the right of fishing is recognized) for a purpose so material to and connected with the actual taking of the fish, as that of making good and effectual the capture of fish brought under certain dominion and control outside of such waters; that is to say, of acquiring absolute property in that which previously may have been the subject of a qualified property, liable to be defeated in various contingencies as, for instance, by the state of the weather, or by the fouling of the seine, or the breaking of it with the weight and pressure of the fish, or by a variety of causes. To enter territorial

waters for such a purpose is a substantial use of them for a purpose directly connected with the taking of fish, and not being permitted by treaty or by any statute, Imperial or Canadian, is within the terms of clause (b) of ch. 94, Revised Statutes of Canada. It is immaterial, so far as the question of right is concerned, that the vessel may have drifted within the limit, for, if appellant's contention is correct, it avails equally where the act is deliberate. The remedy for cases of hardship lies in the pardoning power of the Crown.

Further, as to the meaning of the words "taking fish" and "fishing," in the treaty and statutes: "to fish" is defined in Webster's dictionary as "to be employed in taking fish as by angling or drawing a net." It covers the attempt although the fish may not be present in the waters, and *a fortiori*, it covers all that is involved in the continuous act of acquiring complete and absolute dominion over fish, subject to certain possession and control. It may well be that the *Gerring* people had sufficient control and dominion to have acquired a qualified property in the fish; *Young v. Hichens*,¹ Pollock & Wright on Possession, 37; 2 Kent's Com., 348; but an operation at sea of taking several hundred, or one hundred barrels (as here) of loose and live fish from a bag net, is attended with such obvious chances of some of them at least regaining their natural liberty, that the act of fishing cannot be said to be entirely at an end in a useful sense until the fish are reduced into actual possession. The whole is a continuous act requiring for its successful carrying out that the fish should without delay be taken from the water, and the whole operation may properly have applied to it the terms "fishing" and "taking fish."

I have not arrived at this conclusion without hesitation and doubt, enhanced by the knowledge that the learned Chief Justice and Mr. Justice Gwynne are of a different opinion.

The result, according to my view, is that the appeal should be dismissed.

GIROUARD, J.:—It is not claimed by the appellants that foreign vessels have the right to fish within the territorial jurisdiction of Canada. They admit that both by the principles of international law and the articles of the Fishery Convention of 1818, American

¹6 Q. B. 106.

vessels have no right to fish or take fish within the three-mile limit of the coasts of Nova Scotia. Their main contention, at the hearing before us, was that when the *Gerring* was seized, the *fishing or taking fish* had been completed in the open sea, and that the mere bailing of fish after they had been caught, and lifting them on the deck of the vessel, is not fishing and was no offence.

They quote no authority in support of this proposition, except Webster's definition of the word *fishing*: "An attempt to catch fish, to be employed in taking fish by any means." I have before me the latest edition of Webster, the "International" of 1896, where the word "fishing" is perhaps more definitely defined: "The act, practice, or art, of one who fishes." But neither this nor the other definition decides the point at issue. Was the act of bailing the fish out of the seine into the vessel an operation of fishing or taking fish? That is the question which must be decided according to the principles of law. And to do so, we are brought to examine this other question: Is the fish inclosed in the seine the property and in the possession of the fishermen before it is actually transferred to the vessel? Chief Justice MacDonald, who tried this case in the court below, answered this question in the negative. He said:

I must not omit to notice the contention of Mr. MacCoy, that admitting the seine to have been thrown and the fish enclosed in it outside of the three-mile limit, it is not an offence against the Act to continue to bail the fish from the seine into the vessel after permitting her to drift across the prohibited boundary. I cannot accept his contention that the "fishing" and the "catching of the fish" was complete when the seine was successfully thrown. Further labour is required to save the fish from the sea, and reduce the property to useful possession, and until that be completed the act of fishing and "catching" fish is not in my opinion completed, and in the case before us the crew were in the act of bailing the fish from the seine into the vessel when the seizure was made.¹

After a careful research in the text books and digests, both English and American, I have been able to find only one English case in point, but it fully supports the views of the learned Chief Justice. I refer to the case of *Young v. Hichens*,² decided in 1844

¹⁵ Can. Ex. R. 173.

²¹ D. & M. 592; 6 Q. B. 106.

by the Court of Queen's Bench. The facts are thus summarized in the report of the case:

On the day in question a very large shoal of mackerel came into the bay of St. Ives. The plaintiff's boat, the *Wesley*, put out, and shot her seine, not conducting herself at that time, as the defendant alleged, according to the regulations of the fishery. The seine, nearly 140 fathoms long, was drawn in a semicircle completely round the shoal with the exception of a space of seven fathoms, according to the plaintiff's witnesses, ten fathoms according to the defendant's, which was not filled up by it. In this opening, according to the plaintiff's witnesses, the fishermen in the plaintiff's boat were splashing with their oars and disturbing the water in such a manner that, as they affirmed, the mackerel within would have been effectually prevented from escaping. At this conjuncture, before the plaintiff could draw his net closer, the *Ellen*, the defendant's boat, rowed in through the opening thus made, shot her seine, enclosed the fish, and captured the whole of them.

It was held that the first person could not maintain trespass for taking his fish, his possession not having been complete. Lord Denman, C. J., said:

It certainly results from the evidence in this case, that the fish were reduced to a condition in which it was in the highest degree probable that the plaintiff would become possessed of them. But it is equally certain that he had not become possessed. Whether the necessary possession be rightly described by the word "custodia" or "occupatio," I think it is not attained until the plaintiff has brought the animals into his actual power. It may be indeed that the defendant has committed a tortious act in preventing the plaintiff from completing his possession.

Patterson, J.:

I do not see how we can say this action is maintainable, unless by holding that a person on the point of taking possession of a thing is actually in possession of it.

It is said that this decision does not apply to the present case, as the seine was pursed up, but it cannot be pretended that a seine

can be so closed up that no escape is possible for the fish; an open space must be left for the dip-net used in the bailing out of the fish. The whole process of pursing and bailing is thus described by the owner of the *Gerring*.

Q. Have you had experience in pursing seines? A. Yes, for 7 or 8 years.

Q. Describe how it is done? A. You take the seine and set it out of the boat, and when you get a shoal of fish you go alongside the seine with the vessel and make it fast to the vessel forward and aft. You make the jibs fast and guy out the booms and bail out the fish with a long-handled dip-net right on the deck of the vessel. * * *

Q. Is it usual for a fishing vessel to lie with her sheets off and her jibs down, when she is taking fish out of the net? A. Yes, that is the way they have to do.

Q. What is the object of it? A. It is on account of the seine. If the jibs were kept up it would tear the seine all to pieces.

Q. Why do you let the sheets off? A. They have to do it. If the sheets were kept in she would go astern foremost if the jibs were down.

Q. The object is to keep her in about the same position? A. Yes.

It is not difficult to understand that owing to various causes—mismanagement, mishaps or mere accidents—the fish may and do in fact escape from the seine after it is pursed up. The seine may break, the fastenings at either end of the vessel may give way, the jibs and sheets may become unmanageable, the fish may jump into the sea over the floating sides of the seine, or from the dip-net, and many other things may happen which would prevent the fishermen from capturing the fish enclosed in the seine. In the eyes of the law, the possibility of such accidents, mishaps and mismanagement renders the property and possession of the fish not complete till it is in the vessel.

But admitting that the fish enclosed in a seine pursed up is in the possession of the fisherman, upon what ground can it be pretended that the bailing of the fish is not an operation of fishing? As remarked by Chief Justice MacDonald, the bailing was necessary to reduce the property to useful possessions.

The soundness of the decision in *Young v. Hichens*¹ has never been questioned either in England or in the United States; it is quoted with approbation in American text books and digests, and more particularly in the American and English Encyclopedia of Law, v. "Fish and Fisheries," p. 27; Addison on Torts²; Gould on Waters.³

Angell, Tide Waters,⁴ observes:

As the right of fishing in the sea, and in all inland and navigable waters, is *prima facie* common to all, it follows that an actual appropriation or manupcaption must be made of the fish to complete the right of property; and that when the fish are taken they become the exclusive property of the taker, unless voluntarily restored to their native element. Bracton and Fleta both lay it down as the common law that fishes are *animalia quæ in mari nascunter quæ cum capiuntur captoria fiunt*. But the possession of the fish must be complete.

The learned writer then quotes *Young v. Hichens*.¹

I have no hesitation in following the decision in *Young v. Hichens*,¹ as I find it based upon the Roman law, which everywhere is considered as written reason, and in the absence of other regulations has been accepted as law by all modern civilized nations. The Institutes of Justinian *de rerum divisione*⁵ (translation of Sandars) say:

12. Wild beasts, birds, fish, that is, all animals which live either in the sea, the air or on the earth, so soon as they are taken by any one, immediately become by the law of nations the property of the captor for natural reason gives to the first occupant that which had no previous owner. And it is immaterial whether a man takes wild beasts or birds upon his own ground, or on that of another. Of course, any one who enters the ground of another for the sake of hunting or fowling, may be prohibited by the proprietor, if he perceives his inten-

¹6 Q. B. 606.

²Am. ed. 1891, vol. 2, p. 689.

³Ed. 1891, sec. 1.

⁴Ed. 1847, p. 137.

⁵Lib. 2, t. 1, LL. 12 and 13.

tion of entering. Whatever of this kind you take is regarded as your property, so long as it remains in your keeping, but when it has escaped and recovered its natural liberty, it ceases to be yours, and again becomes the property of him who captures it. It is considered to have recovered its natural liberty if it has either escaped out of your sight, or if, although not out of sight, it yet could not be pursued without great difficulty.

13. It has been asked, whether, if you have wounded a wild beast, so that it could be easily taken, it immediately becomes your property. Some have thought that it does become yours directly you wound it, and that it continues to be yours while you continue to pursue it, but that if you cease to pursue it, it then ceases to be yours, and again becomes the property of the first person who captures it. Others have thought that it does not become your property until you have captured it. We confirm this latter opinion because many accidents may happen to prevent your capturing it. D. xli., tit. 1.

Gaius in this passage of the Digest informs us that the former opinion was that of Trebatius.

It cannot be denied that these Roman rules never prevailed in England or on the continent of Europe to their full extent, at least as to wild animals taken or caught on private grounds by a trespasser or a wrongdoer. As Lord Chelmsford, referring to the passage from the Institutes, points out in *Blades v. Higgs*, in 1865¹:

With respect only to live animals in a wild and unreclaimed state, there seems to be no difference between the Roman and the common law.

Jurists agree that the word "occupation," "capture," or "custody," used in the Institutes, means bodily possession, *corpore et animo*, although it is contended by some that the fisherman who has secured fish in his seine, or the hunter who has wounded a wild animal, has acquired some qualified rights of ownership over the same, provided the fishing or hunting be continued, but if

¹11 H. L. Cas. 637.

abandoned he loses every claim or right to the animal. In such cases, therefore, fishing or hunting is not terminated till the animal is actually captured.

The best interpreters of the Roman law hold that wild animals are not possessed till they are actually and beyond peradventure in our power.

Domat, says:¹

Wild beasts, fowls, fishes, and everything that is taken, either in hunting, fowling or fishing, by those who have a right thereto, belong to them as their property by virtue of the seizure which they make of them.

The original text says more:

Les bêtes sauvages, les oiseaux, les poissons et tout ce que peuvent prendre, ou à la chasse ou à la pêche, ceux qui en ont le droit, leur sont acquis en propre par la *prise qui les met en leurs mains*.

Savigny, *Jus Possessionis*, says:²

Wild animals are only possessed so long as some special disposition (*custodia*) exists, which enables us actually to get them into our power. It is not every *custodia*, therefore, which is sufficient; whoever, for instance, keeps wild animals in a park, or fish in a lake, has undoubtedly done something to secure them, but it does not depend on his mere will, but on a variety of accidents, whether he can actually catch them when he wishes; consequently, possession is not here retained; quite otherwise with fish kept in a stew, or animals in a yard, because then they may be caught at any moment.

Puffendorf says:³

With regard to things movable, every one agrees that, in order to appropriate the same by right of first occupation, the possession must be bodily, and that it is necessary that

¹Liv. 3 tit. 7, 2 par. 7.

²Perry's ed., p. 257.

³Lib. 4, cap. 6, s. 9.

they should be removed from the place where they were found to the place of domicile of the finder, or the place where they are intended to be kept.

And he then explains that it is not essential that this possession should at first be manual.

That possession may also be acquired with instruments, such as snares, nets, traps, weirs, hooks and the like; * * * provided that these instruments are entirely under our control * * * and also that the animal is so well caught that it cannot possibly escape, at least during the length of time required to put the hand on it.

Heinneccius¹ lays down the same rule, and so far both he and Puffendorf merely repeat what Grotius² says on the same subject. Puffendorf finally makes the distinction at Sec. 10:

That if I have mortally wounded or at least seriously disabled an animal, no one can lay any claim to it so long as I pursue it on grounds where I have the right to hunt; but if the wound be not mortal, and the animal can well escape, it still goes to the first occupant.

Barbeyrac criticises Puffendorf, and holds that it is not always necessary that the animal should be wounded or removed from its natural element, and that its mere discovery and pursuit, with the intention to capture it, are sufficient. Pothier³ observes that in France the latter opinion prevails in practice, *dans l'usage*; but

Laurent,⁴ says that the jurisprudence has been to the contrary. A decision of the Superior Court of Quebec holds that it is sufficient that the animal be wounded and pursued, and quotes the authority of Cujas. *Charlebois v. Raymond*.⁵

¹Sect. 342.

²Lib. 2, cap. 8, sect. 3 and 4.

³Propriété, n. 26.

⁴Vol. 8, n. 442.

⁵12 L. C. Jur. 55.

For the purposes of this case, it may be asserted that all the authorities agree in holding that a wild animal caught in a net or trap is not in the full possession or the absolute property of its owner unless finally seized. This feat, therefore, cannot be accomplished till the hunting or fishing is successfully completed.

These principles were recognized in two American cases quoted with approbation by Chancellor Kent. In *Pierson v. Post*⁶ the Supreme Court of the State of New York held in 1805 that:

Pursuit alone gives no right of property in animals *feræ naturæ*; therefore an action will not lie against a man for killing and taking one pursued by, and in view of, the person who originally found, started, chased it, and was on the point of seizing it. Occupancy in wild animals can be acquired only by possession, but such possession does not signify manucaption, though it must be of such a kind as by nets, snares or other means, to so circumvent the creature that he cannot escape.

Tompkins, J., delivering the opinion of the court, said:

If we have recourse to the ancient writers upon general principles of law, the judgment below is obviously erroneous. Justinian's Institutes¹ and Fleta² adopt the principle, that pursuit alone vests no property or right in the huntsman; and that even pursuit, accompanied with wounding, is equally ineffectual for that purpose, unless the animal be actually taken. The same principle is recognized by Bracton.³

Puffendorf⁴ defines occupancy of beasts *feræ naturæ*, to be the actual corporal possession of them, and Bynkershock is cited as coinciding in this definition. It is indeed with hesitation that Puffendorf affirms that a wild beast mortally wounded, or greatly maimed, cannot be fairly intercepted by another, whilst the pursuit of the person inflicting the wound continues. The foregoing authorities are decisive to show

⁶3 Caine 175.

¹Lib. 2, tit. 1, s. 13.

²Lib. 3, c. 2, p. 175.

³Lib. 2, c. 1, p. 8.

⁴Lib. 4, c. 6, ss. 2 and 10.

that mere pursuit gave Post no legal right to the fox, but that he became the property of Pierson, who intercepted and killed him.

It therefore only remains to inquire whether there are any contrary principles, or authorities, to be found in other books, which ought to induce a different decision. Most of the cases which have occurred in England, relating to property in wild animals, have either been discussed and decided upon the principles of their positive statute regulations, or have arisen between the huntsman and the owner of the land upon which beasts *feræ naturæ* have been apprehended, the former claiming them by title of occupancy, and the latter *ratione soli*. Little satisfactory aid can, therefore, be derived from the English reporters.

Barbeyrac, in his notes on Puffendorf, does not accede to the definition of occupancy by the latter, but, on the contrary, affirms that actual bodily seizure is not, in all cases, necessary to constitute possession of wild animals. He does not, however, describe the acts which, according to his ideas, will amount to an appropriation of such animals to private use, so as to exclude the claims of all other persons, by title of occupancy, to the same animals; and he is far from averring that pursuit alone is sufficient for that purpose. To a certain extent, and as far as Barbeyrac appears to me to go, his objections to Puffendorf's definition of occupancy are reasonable and correct. That is to say, that actual bodily seizure is not indispensable to acquire right to, or possession of, wild beasts; but that, on the contrary, the mortal wounding of such beasts, by one not abandoning his pursuit, may, with the utmost propriety, be deemed possession of him since, thereby, the pursuer manifests an unequivocal intention of appropriating the animal to his individual use, has deprived him of his natural liberty, and brought him within his certain control. So also, encompassing and securing such animals with nets and toils, or otherwise intercepting them in such a manner as to deprive them of their natural liberty, and render escape impossible, may justly be deemed to give possession of them to those persons who, by their industry and labor, have used such means of apprehending them. Barbeyrac seems to have adopted, and had in view in his notes, the more accurate opinion of Grotius¹ with respect to occupancy. That celebrated author², speaking of occupancy, proceeds thus: "*Requiritur*

¹This is a mistake. Puffendorf reproduces in this respect the opinion of Grotius.

²Lib. 2, c. 8, s. 3, p. 309.

autem corporalis quædam possessio ad dominium adipiscendum; atque ideo vulnerasse non sufficit." But in the following section he explains and qualifies this definition of occupancy: "*Sed possessio illa potest non solis manibus, sed instrumentis, ut decipulis, ratibus, laqueis dum duo adsint; primum ut ipsa instrumenta sint in nostra potestate, deinde ut fera, ita inclusa sit, ut exire inde nequeat.*" This qualification embraces the full extent of Barbeyrac's objection to Puffendorf's definition, and allows as great a latitude to acquiring property by occupancy, as can reasonably be inferred from the words or ideas expressed by Barbeyrac in his notes. The case now under consideration is one of mere pursuit, and presents no circumstances or acts which can bring it within the definition of occupancy by Puffendorf, or Grotius, or the ideas of Barbeyrac upon that subject.

*Pierson v. Post*³ was reaffirmed in 1822 by the same court in *Buster v. New Kirk*.⁴

Per Curiam. The principles decided in the case of *Pierson v. Post*³ are applicable here. The authorities cited in that case establish the position that property can be acquired in animals *feræ naturæ*, by occupancy only; and that, in order to constitute such an occupancy, it is sufficient if the animal is deprived of his natural liberty, by wounding, or otherwise, so that he is brought within the power and control of the pursuer. In the present case, the deer, though wounded, ran six miles; and the defendant in error had abandoned the pursuit that day, and the deer was not deprived of his natural liberty, so as to be in the power or under the control of N. He, therefore, cannot be said to have had a property in the animal, so as to maintain the action. The judgment must be reversed.

Having arrived at the conclusion that the bailing of the fish is an operation of fishing, or taking fish, it is not necessary for me to express any opinion upon two important questions which were raised by the Crown, namely, whether the recent Dominion statute prohibiting purse seining, applies to this case, and whether the convention of 1818 prohibits American fishermen from entering within three miles of the *coasts* of the Dominion—others than bays and

³3 Caine 175.

⁴20 Johns, 74.

harbours—for any purpose not authorized by the convention, and particularly for the purpose of bailing fish caught in the open sea, if such an act cannot be considered as fishing, or taking fish.

Finally, I am of the opinion that the appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *MacCoy, MacCoy & Grant.*

Solicitor for the respondent: *W. B. A. Ritchie.*

EXHIBIT 10.

Edward Morris to the Secretary of State.

Gloucester, Mass., *June 12, 1897.*

HON. JOHN SHERMAN,
Secretary of State,
Washington, D. C.

SIR:

On the twenty-fifth day of May, 1896, the fishing schooner *Frederick Gerring, Jr.*, owned by me, a citizen of the United States, was seized by the Canadian authorities on a charge of fishing within the territorial waters of the Canadian Dominion. Upon a trial had in the Exchequer Court of Canada, Nova Scotia Admiralty District, before the Hon. James MacDonald, Judge of said Court, the said vessel and her cargo were condemned. I then appealed to the Supreme Court of Canada, where, after a long delay, the appeal was dismissed by a divided court, three judges deciding that the appeal should be dismissed, and two judges, one of whom was the Chief Justice, deciding that the appeal should be allowed with costs. The *Gerring* was seining for mackerel and had set her seine around a school of fish, which were being hauled on board from her seine at the time she was seized. It was agreed that when the seine was set around the fish, the *Gerring* was more than three miles from shore, but it was contended by the Canadian govern-

ment that when she was seized she was within three miles of the shore, and that the act of bailing was "fishing" within the meaning of the Canadian statute. The testimony for the Canadian government was that the *Gerring* was within three miles of "Gull Ledge," so-called, when she was seized. Our testimony was that she was at that time more than three and one-half miles distant from said ledge. This "Gull Ledge" is nothing more than a barren rock over which the sea breaks in rough weather, and we contend is no part of the Canadian coast. At the time she was seized the *Gerring* was four and three-quarter miles distant from "Barren Island," "so-called, and six and one-half miles distant from the mainland. After the decision of the Exchequer Court, I called this matter to the attention of your Department and forwarded to Mr. Olney a transcript of the testimony taken in the case, together with a copy of the opinion of the Judge of said Court. I enclose herewith a copy of the opinion of Sedgewick, J. of the Supreme Court, which was concurred in by two other justices of that court; also a copy of the opinion of Gwynne, J. which was concurred in by the Chief Justice. An examination of the testimony and of the opinions above referred to, will, I have no hesitation in saying, satisfy you that I have been treated harshly and unjustly by the Canadian courts and authorities, and that the decision condemning my vessel is unwarranted. I am advised that it is a case which calls for the interposition of the government of the United States, and I respectfully ask you to give the matter your consideration and to take such action as justice and the protection of my rights as a citizen of the United States demand. The *Gerring* at the time of the seizure, with outfits and catch on board, was valued at Seventy-five Hundred Dollars. The fish were allowed to spoil, and in consequence were sold at a reduced price. The vessel has been moored to a wharf in Halifax since the time of the seizure, so that if the vessel is returned to me she will be greatly depreciated in value, the outfits practically worthless, and her fishing gear, boats, and provisions absolutely of no value whatever. Besides all this I have been put to an expense of eleven or twelve hundred dollars for legal advice and other services.

Respectfully yours,

EDWARD MORRIS.

EXHIBIT 11.

Mr. Edward Morris to Honorable John D. Long.

Gloucester, Mass., July 12, 1897.

HON. JOHN D. LONG,

Dear Sir:

I am the owner of the Schr. *Frederick Gerring* that was seized last year by the Canadian authorities. I was not at home at the time you was in Gloucester, and I would have liked to have seen you very much so I could have explained to you about this case. I am afraid it has never been put before the State Department at Washington as it had ought to have been, for the reason that Mr. Sherman does not seem to take any notice of it.

I appealed this case and carried it up to the Supreme Court at Ottawa, Canada, through the advice of Secretary Olney.

The case was tried before four Judges and the Chief Justice Strong. I lost the case, the Chief Justice and one judge in my favor and three judges against me.

After the case was tried it came up four times before they gave the decision.

Mr. Olney is very much interested in the *Gerring's* case and he has written Mr. Sherman lately about it. He says that they never had proof enough to condemn the vessel.

Congressman Moody writes to me that he thinks that the State Department will ask for the release of the vessel. As regards to the vessel and the fishing gear, it is hardly worth while to go to Halifax after them as they are nearly completely spoiled.

Capt. Collins, Agent of the Mutual Fishing Insurance Co., was on board the *Gerring* a week ago. He told me that everything was in a wretched condition, for they have never taken care of her or anything belonging to her since they have had possession of her.

The seine which was worth a thousand dollars has laid in a pile ever since they have taken her and must be completely spoiled.

Her large boat which was worth Two Hundred and Seventy-five Dollars is all split to pieces. Her two small boats have been laying in the weather all the time since she was taken. All her stores and provisions are spoilt. Her sails were unbent and put in a store when not near dried. I saw that myself and I told them they would spoil if left lay in that condition, in which they have laid ever since.

The mackerel which were on board they let spoil, by not taking care of them, and sold them for four dollars a barrel when they were rusty, which if they were taken care of would have brought Thirteen dollars the same day. Her string of cable was even left lay on the deck and of course that is spoilt. When the vessel was taken, her and her fishing gear, fish and stores were worth Eight Thousand Dollars and now the whole thing isn't worth anything.

There is a very important question in this case "What consists of a Headland?" I could not get the Canadian Authorities to take any notice of that, and I think that the American Government had ought to look into this and see what consists of a Headland.

I am going to send you the chart that was in the Canadian Court with the positions the two Canadian Captains said the vessel was in. Capt. MacKenzie of the Cruiser *Vigilant* said she was over $3\frac{1}{2}$ miles from Gull Ledge. His is the outside position. Capt. Knowlton of the *Aberdeen* who seized the vessel said she was $1\frac{3}{4}$ miles from Gull Ledge. His is the inside marks.

Now this Gull Ledge is claimed to be 30 feet high, but all the people who live on the coast say the sea breaks over it continually in rough weather. The nearest land to where Knowlton says the vessel was, is Barren Island, which is a little over 3 miles away, which you will see on the chart. I don't think it would be any use to send Mr. Sherman this chart as probably it would never be looked at. You are used to the water and whenever you look at it you will understand the positions.

Now here is where my Captain wanted to measure the distance, and asked the Captain of the cruiser to tow his log to Gull Ledge to see if he was not three miles away, which he would not do saying he would run his steamer ashore. My Captain said "Take my seine-boat, my men and your mate with my log, or yours, or both of them, and measure the distance for I am sure I am 3 miles away from that ledge," which he would not do.

When he went to tow the vessel into Liscomb Harbor the Captain went to put his log out, but the Captain of the cruiser told his mate not to let him do it.

Capt. Knowlton, of the *Aberdeen*, said that he took the cross-bearings of the position the vessel was in and laid it down on the

chart and when the mate went on the stand in court he said he was the one that took the cross-bearings and position of the vessel while the Captain was walking on the bridge.

It was also proven that Capt. Knowlton never laid the courses down on the chart, but Commodore Spain marked them on the chart in Halifax three days after the seizure, and he, Spain, was nowhere near where the vessel was seized, but at the time was a hundred miles to the westward. Everything they said seemed to go all right in court.

This is all in print in Washington, with the State Department, and you can see there is a good deal of crooked work in this seizure, and it is pretty hard for one man alone to fight that Canadian Government, for I don't think any vessel taken, whether she be innocent or guilty, will have any justice shown her in that court.

Will you kindly look into this case and see if you can help me, as it has completely ruined me.

I hope you will excuse my long letter as I wished to state the particulars to you.

Yours very truly,

CAPT. EDWARD MORRIS,

#36 Beacon St.

EXHIBIT 12.

The Secretary of State to Lord Pauncefote.

No. 709.

Department of State,
Washington, *June 22, 1897.*

HIS EXCELLENCY THE RIGHT HONORABLE

SIR JULIAN PAUNCEFOTE, G. C. B., G. C. M. G., etc.

Excellency:

I beg to call your attention to the case of the seizure of the fishing schooner *Frederick Gerring, Jr.*, owned by Mr. Edward Morris, of Gloucester, Massachusetts. The short facts of the case are as follows:

On May 25, 1896, the *Frederick Gerring, Jr.*, cast her nets off Liscombe Island, near the southern coast of Nova Scotia. The seine had surrounded a school of mackerel on the high seas outside of the three-mile limit. While removing the fish from the seine,—an operation which took at least two hours,—the seine and the vessel drifted within the three-mile limit, and while there continuing the operation of removing the fish from the seine, the vessel was seized by the Canadian steamship *Aberdeen* for unlawfully fishing within the three-mile limit, and she was condemned by the Judge of Admiralty for the Nova Scotia Admiralty District and the judgment affirmed by the Supreme Court of Canada in an opinion in which three of the Justices concurred, and from which two of the Justices, including the Chief Justice, dissented.

When the net was lowered it was after consultation with the commander of the *Vigilant* and an expression of his opinion that the schooner was on the high seas without the three-mile limit. The *Vigilant* steamed away while the nets of the *Gerring* were in the water, and the vessel was seized in the manner aforesaid after she had drifted within the three-mile limit.

I beg to call your Excellency's attention to the opinion of the Admiralty Court in this case, and especially to the dissenting opinion. From the recital of facts given by the Court, the inference is conclusive that the *Frederick Gerring* was outside the limit when she cast her net and had drifted within the limit while engaged in the operation of hauling it. The Court held that this was a technical violation of the Canadian Fishing Laws and imposed the penalty of forfeiture upon the vessel. The Court closes the opinion in the following language:

"It would, I apprehend, be difficult, if not impossible, to enforce these fishery laws, to which our people attach supreme importance, if those American subjects, who so eagerly seek to compete with our people along our shores in this industry; who are not, I fear, always overscrupulous in the observance of the laws of which they have ample notice, should be permitted to plead accident or ignorance to a charge of infraction of these laws. Such a plea, however effective it may be to the executive authority of the country, cannot avail in this Court."

I beg to call your Excellency's attention to the reasoning of the dissenting opinion as indicating the real equity of the case, even though there might be a technical violation of the law, as held in the majority opinion. It would seem to the undersigned that the consequences apprehended in the above quotation from the majority opinion would not ordinarily follow in cases of the character of the one now under consideration, where there seems to have been no criminal intent, and where peculiar care seems to have been exercised at the outset to avoid a violation of the Fishery laws. But in any event, the concluding sentences above quoted from the majority opinion contains a plain intimation by the Court that this is a proper case for the exercise of executive clemency; and in view of the spirit of comity existing between the two Governments, and of Your Excellency's high sense of equity, the undersigned would respectfully request the exertion of Your Excellency's good offices with the Canadian authorities to the end that the penalty of confiscation may be remitted, as, in view of the straitened financial circumstances of Mr. Morris, the case is one of very great hardship.

I have the honor to attach hereto, for your consideration, a copy of the decree of the Supreme Court of Canada, and also copy of letter from Mr. Richard Olney, late Secretary of State, in which he suggests the propriety of this appeal.

I have the honor to be, etc.,

JOHN SHERMAN.

Enclosure:

Decree as above.

[*Enclosure.*]

RICHARD OLNEY,
23 Court Street.

Boston, 14 June, 1897.

HON. JOHN SHERMAN,
Secretary of State, Washington, D. C.

Sir: The contents of the enclosed papers require no explanation.

I am not counsel for the party interested—Mr. Edward Morris—and have consented to forward them to you only out of friendliness and because his case seems to be one of great hardship.

You will observe that it is doubtful if there has been any violation of law by Mr. Morris or his vessel and that, if there has been, the violation is purely technical and entirely devoid of the element of criminal intent. Two judges of an appellate court of five, including the Chief Justice, are of opinion that the vessel should not have been condemned.

Mr. Morris could undoubtedly take an appeal from the Canadian court to the Privy Council in England. But the expense would be large, the delay great and indefinite with the prospect, almost the certainty, that meanwhile the subject-matter of the litigation would perish.

Mr. Morris is an active, practical fisherman of small resources, to whom the loss of his vessel would be a great financial disaster. He has already spent in litigation much more than he could afford. Under the circumstances I have advised Mr. Morris that the true course for him to pursue is not to carry the litigation farther nor to present a claim against the British government, but to endeavor to get a remission of the sentence through the intercession and good offices of the British Ambassador at Washington. Sir Julian Pauncefote has great influence with the Canadian authorities, is animated by a keen sense of justice and a strong desire to promote the friendly relations between Great Britain and the United States by recommending and urging any course which under the circumstances of any particular case equity and fair dealing seem to warrant.

I should have little doubt that, if Mr. Morris' case were presented to Sir Julian by the State Department with the request that he would exercise his good offices with the Canadian Government in Mr. Morris' behalf, he would probably exert himself in the matter both strenuously and successfully.

Trusting the State Department may find no obstacle to taking action on Mr. Morris' behalf in the direction above suggested, I am,

Respectfully yours,

RICHARD OLNEY.

Enclosures:

(1) Letter of Edward Morris to Secretary of State, June 12, '97;

(2) Opinion of Sedgwick, J. (concurred in by two other judges);

(3) Judgment of Gwynne, J. (concurred in by the Chief Justice).

EXHIBIT 13.

The British Chargé d'Affaires to the Secretary of State.

Washington, June 23, 1897.

Sir: I have the honour to acknowledge the receipt of your note No. 709 of the 22nd instant transmitting correspondence respecting the seizure of the fishing schooner *Frederick Gerring, Jr.*, by the Canadian steamship *Aberdeen* in May last year.

In compliance with instructions left by Sir. J. Pauncefote, I have this day forwarded the correspondence in question to the Governor-General of Canada for the favorable consideration of the Dominion Government.

I have the honor to be with the highest consideration, Sir,

Your most obedient, humble servant,

REGINALD TOWER,

H. B. M. Chargé d'Affaires.

THE HON. JOHN SHERMAN.

EXHIBIT 14.

The British Chargé d'Affaires ad Interim to the Secretary of State.

British Embassy, Manchester, Mass., July 15, 1897.

SIR:

With reference to your note to Sir Julian Pauncefote, No. 709 of the 22nd ultimo, respecting the seizure and condemnation

of the American fishing schooner *Frederick Gerring, Jr.*, of Gloucester, Massachusetts, for unlawful fishing in Canadian waters, I have much pleasure in informing you that, in view of all the circumstances of the case, the Government of the Dominion have decided that the vessel should be restored to her owner, on payment of a nominal fine, together with the costs incurred in her prosecution.

I have the honour to be, with the highest consideration.

Sir,

Your most obedient, humble servant,

C. F. FREDERICK ADAM.

THE HONORABLE JOHN SHERMAN.

EXHIBIT 15.

The Acting Secretary of State to Edward Morris.

Department of State, Washington, *July 19, 1897.*

EDWARD MORRIS, ESQUIRE,
Gloucester, Massachusetts.

SIR:

Referring to your letter of May 12th last, relative to the seizure and condemnation of the American fishing schooner *Frederick Gerring, Jr.*, I enclose for your information a copy from the British Chargé d'Affaires *ad interim* at this capital, stating that in view of all the circumstances of the case the Government of the Dominion of Canada has decided that the vessel in question should be restored to the owner on payment of a nominal fine, together with the costs incurred in her prosecution.

Respectfully yours,

WILLIAM R. DAY,
Acting Secretary.

Enclosures:

From British Chargé d'Affaires.
July 15, 1897.

EXHIBIT 16.

The Acting Secretary of State to the British Chargé d'Affaires.

No. 727.

Department of State, Washington, July 19, 1897.

MR. C. F. FREDERICK ADAM,
etc., etc., etc.

SIR:—

I have the honor to acknowledge the receipt of your note of the 15th instant, stating that in view of all the circumstances of the case the Government of the Dominion of Canada has decided that the American fishing schooner *Frederick Gerring, Jr.*, should be restored to her owners on payment of a nominal fine, together with the costs incurred in her prosecution.

I beg to express to the proper authorities of Her Majesty's Government the great gratification with which the Department has learned of the decision of Canadian Government in regard to the matter.

I have the honor to be, etc., etc.,

WILLIAM R. DAY,
Acting Secretary.

EXHIBIT 17.

The American Ambassador to the Secretary of State.

No. 100

American Embassy,
London, August 18, 1897.

SIR,—

Referring to your Instruction No. 136, of the 19th ultimo, and to previous correspondence, I have the honour to enclose herewith the copy of a note which I have received from the Marquis of Salisbury, stating that, although the Supreme Court upheld,

by a majority of one, the judgment of the Admiralty Court of Nova Scotia, in the case of the American fishing schooner *Frederick Gerring*, the Canadian Government has, on the recommendation of the Minister of Marine and Fisheries, decided that the schooner should be released, and given back to her owners on payment by them of all the costs incurred, both in the Admiralty Court of Appeal, as well as of all charges for custody or otherwise in connection with the seizure, and also on payment of a nominal fine for infraction of the law.

I have, in accordance with your instruction aforesaid, expressed to the Foreign Office the gratification afforded to you by this decision of the Canadian Government.

I have the honour to be,

Sir,

Your obedient servant,

JOHN HAY.

THE HONORABLE

JOHN SHERMAN,

Secretary of State.

Enclosure.

1/100 Lord Salisbury to Mr. Hay, Aug. 12, 1897.

[*Enclosure.*]

Lord Salisbury to the American Ambassador.

1/100.

Foreign Office, August 12 1897.

YOUR EXCELLENCY:

On the 28th of May last you did me the honour to address to me a note requesting that the penalty incurred by the American fishing schooner *Frederick Gerring*, for contravention of the Convention of 1818, between Great Britain and the United States, might be remitted. I have now received from the Secretary of State for the Colonies a copy of a despatch on the subject from the Governor General of Canada, with the substance of which I have the honor to acquaint Your Excellency.

The Supreme Court upheld, by a majority of one, the judgment of the Admiralty Court of Nova Scotia, but in view of the circumstances of the case, the Minister of Marine and Fisheries recommended that the enforcement of the judgment of confiscation would be open to the charge of hardship. He considered that there was room for the belief that there was no intention on the part of the master to violate the treaty or break the law, and, being supported in this view by a perusal of the reasons for the judgments as stated by the judges of the Court of Appeal, he held that the protection of Canadian territorial rights and the supremacy of the law had been sufficiently vindicated by the seizure and successful prosecution of the vessel. The Canadian Government have accordingly decided that the schooner should be released and given back to her owners, on payment by them of all the costs incurred, both in the Admiralty Court and in the Court of Appeal, as well as of all charges for custody, or otherwise, in connection with the seizure; and also on payment of a nominal fine for infraction of the law.

I have the honor to be, &c.,

(Signed) SALISBURY.

His Excellency

The Honble. John Hay,
&c., &c., &c.

EXHIBIT 18.

Edward Morris to the Secretary of State.

Gloucester, Mass., Sept. 7, 1897.

HON. JOHN SHERMAN,
Secretary of State,
Washington, D. C.

DEAR SIR:—

I received a letter from Alvey A. Allen [Adee], your Assistant Secretary, and also a copy of Lord Salisbury's letter concerning *Schr. Frederick Gerring*, where they say I can have the vessel back by paying all expenses. In regard to the vessel, she is not worth

going after. As they have kept her so long and have taken no care of her, she is now ruined. Her seines are completely ruined, and her boats have lain in the water until they are good for nothing. Her stores are all ruined and her cooking utensils and stoves are a mass of rust. They unbent the sails while they were damp and put them in a store. I told them that they would spoil if left in that condition and they have lain there ever since. There were one hundred and twenty barrels of mackerel on board the vessel when she was seized, which were worth Thirteen dollars a barrel at the time. They allowed these mackerel to spoil and some of them brought only Four Dollars a barrel. The whole lot brought only Eight Hundred and Ten Dollars which they do not mention. This vessel, her fish and fishing gear were worth Eight Thousand Dollars, and if the vessel and fishing gear were sold to-day they would not bring One Thousand Dollars. The Canadian Government knows this and that is why they want me to take her back. They are ashamed of what they have done, as they never had any case against the vessel. They admit that the vessel caught her fish outside of the three mile limit, but claim that she drifted across the three mile limit while bailing out the fish, and she had just as much right to do that as she has to sail across the line with the fish on deck, and Chief Justice Strong, one of the greatest learned judges Canada ever had, sat on this case and said the same. He has been appointed since to the Privy Council in England.

If the vessel was inside the three mile limit as they claimed she was, why did not the Captain of the Cruiser let my Captain measure the distance to Gull Ledge with the log when he said, "Take my boat, my men, your officers and my log or your own and measure the distance to Gull Ledge as I know that I am more than three miles off." Could anything be fairer than that? When they went to tow the vessel to Liscomb, which was six miles and a half away, my Captain wanted to tow the log but the Captain of the Cruiser would not allow him to. Don't you think that if the Captain of the Cruiser was sure he was inside the three mile limit he would have allowed him to tow the log quick? If I had been aboard of the vessel at the time I should have anchored her right where she was.

Captain Moulton, of the Cruiser *Aberdeen*, swore he took the cross-bearings and the position of the vessel himself, but when the Mate was called on the stand in court he said that he took the bearings while the Captain walked on the bridge. The chart that the Captain claimed he marked the position of the vessel on at the time of the seizure was never produced in court, but another chart on which Commodore Spain had marked the position of the vessel three days after the seizure was produced, and he was eighty miles away at the time of the seizure. He also went on the stand and swore that one-half of Gull Ledge was larger than George's Island in Halifax Harbor, which was the largest falsehood that a man ever swore to.

I tried to hold a commission in Gloucester to take the evidence of the captains of the fourteen vessels that were there at the time, but they disappointed me in every way until I had to give it up. Commodore Spain and their lawyer put every obstacle in my way that they could. When Captain McKenzie, of the cruiser *Vigilant*, was asked in court how far outside of the three mile limit the vessel was, he said, "A good half mile," and for him daring to tell the truth his cruiser was taken away from him by Commodore Spain. I talked with the mate of the Cruiser *Vigilant* lately and he said it was the biggest outrage he ever saw and that they had no right to seize the vessel at the time.

As to the seizure of the vessel, it was nothing less than stealing her. If I had the means I would have carried this case to the Privy Council in England and I know I would have gotten the case as Judge Strong is now one of the members of the Privy Council in regard to the vessel, if this is the way it had got to be settled, they are perfectly welcome to her, for poor as I am I shall never go after her, as it has ruined me anyway, and they are welcome to her as they will never get another dollar out of me. I see that the press all through Nova Scotia condemns the Canadian Government for the action they have taken in the case. I hope you will excuse my long letter, as I cannot help writing the whole particulars to you as I feel very sore over the way it has turned out.

I have never published anything concerning this case or gave it to any of the reporters that have been after me, and they have

been to me from the leading New York and Boston papers as this case interests the whole New England Coast. They even went so far as to try to get out of me what Secretary Olney told me before he went out of office and you have written me since you came into office. I suppose the Democrats want something to play on their harp next election time.

Yours truly,

EDWARD MORRIS.

EXHIBIT 19.

The Secretary of State to the British Ambassador.
No. 934.

DEPARTMENT OF STATE,
Washington, *March 1, 1898.*

HIS EXCELLENCY THE RIGHT HONORABLE

SIR JULIAN PAUNCEFOTE, G. C. B., G. C. M. G.,
Etc., etc., etc.

Excellency: Your Excellency will recall the case of the American fishing schooner *Frederick Gerring, Jr.*, which in the course of last year was the occasion of considerable correspondence both with your Embassy and directly with Her Majesty's government through the United States Embassy at London.

My note to Your Excellency of the 22nd of June last presented the equities of the case with a view to obtaining in a spirit of clemency the remission of the extreme penalty of confiscation of the vessel which was decreed by the Nova Scotia Admiralty Court and confirmed by the Supreme Court of Canada by a majority of one vote,—three of the Justices concurring in the finding of the lower court, while two of the Justices, one of them being the Chief Justice of the Supreme Court of Canada, disagreed.

When that note was written and subsequently in accepting the remission of the penalty of confiscation which Her Majesty's Government graciously ordered and which this Government had pleasure in accepting, it was believed that such a remedy would afford a complete and satisfactory settlement of the case. The note addressed to Mr. Adam by the Acting Secretary of State on the 19th

of July accordingly expressed the great gratification with which the Department had learned the decision of the Canadian Government in regard to the matter.

I regret to say that circumstances have since been brought to the attention of this Department which, while not perhaps exactly in the nature of after discovered evidence, and not directly affecting the original questions which may have been brought before the trial court and passed in review by the Supreme Court of Canada, were nevertheless pertinent to the settlement of the case as between the two Governments and which, had they been known to the Department, would doubtless have led to further correspondence at the time and delayed, if not perhaps obstructed, the acceptance of the remission of the penalty of forfeiture and the reduction of the fine imposed upon the vessel to a nominal sum as a sufficient and equitable settlement.

The Department is now informed that the catch of mackerel which was admittedly seined by the *Frederick Gerring, Jr.*, outside the three-mile limit, and while engaged in the removal of which from the seine the vessel drifted within the three-mile limit of a barren and isolated rock called "Gull Ledge," near the southern coast of Nova Scotia, where the vessel was seized by the Canadian fishery cruiser, was sold by the British authorities for a considerable sum, which does not appear to have been taken into account in adjusting the reduced penalty and costs to which the vessel remained liable after the commutation of her sentence. It further appears that the seized vessel, while in the custody of the British authorities, was treated in such a careless manner that her hull, rigging and outfit have become so damaged as to be practically worthless and their owner has found them to be of no value to him whatever.

I am not unaware that when a case of this character passes from the judicial to the diplomatic resort and becomes the subject of a settlement offered by the one party and accepted by the other it becomes virtually barred from further treatment in that channel unless exceptional circumstances, unknown to the high parties reaching the agreement, should subsequently become developed. I have no disposition to re-open the case upon its original merits, although I must frankly confess that this Government has never felt that the *Frederick Gerring, Jr.*, violated the treaty provi-

sions between the United States and Great Britain, or that her seizure and condemnation were justified by the letter or spirit of that compact. That the equities of the case leaned strongly in favor of the inculpated vessel is obvious on the high authority of the Chief Justice and an Associate Justice of the Supreme Court of Canada. Nevertheless, believing at the time that the measure of clemency offered by Her Majesty's authorities of the Dominion of Canada would afford adequate relief and reduce the loss of the owner of the vessel to a minimum sum which might be conveniently disregarded, this government hastened to accept the tendered settlement without, however, yielding its conviction as to the doubtful character of the proceedings upon which the original penalty was founded. The object of this present note is not to re-open the case but to call the attention of Her Majesty's government to the facts now represented which deprive the graciously tendered reparation of a large part if not of all of its sufficiency, so that the outcome leaves the owner of the *Frederick Gerring, Jr.*, as much a sufferer by the actual loss of his catch, or its value, and the virtual loss of his vessel as though the original penalty of confiscation had been carried out. That the order of restitution of the vessel necessarily involved the moral obligation to return it in substantially the same condition as that in which it was seized, is a proposition which I venture to believe is not open to disagreement and I further think the sale of the seined fish and the appropriation of the proceeds may admittedly be regarded as a proceeding contrary to the spirit in which the offer of clemency was made and accepted.

I trust, therefore, that these circumstances may be taken into account by Her Majesty's Government in that large spirit of justice which properly animates the treatment of international incidents of this character, and with a view to such examination and disposition of the subject I address this friendly note to you instead of making the matter the occasion of an instruction to the United States Ambassador at London. I am the more disposed to adopt this comparatively informal manner of treating the question in view of the previous correspondence had with Your Excellency on the subject.

I have the honor to be, etc., etc., etc.,

JOHN SHERMAN.

EXHIBIT 20.

The British Ambassador to the Secretary of State.

Washington, 18 April, 1898.

SIR:

With reference to your note No. 134 (934) of the 1st ultimo, I have the honor to forward to you a copy of the minute of the Privy Council of Canada in the case of the seizure of the American fishing vessel *Frederick Gerrring, Junior*.

In transmitting this reply to the representations made in this case by the United States Government, the Dominion Government express confidence that their view as to the lenient and equitable character of the action taken by them in the matter will be shared by the United States Government.

I have the honour to be, with the highest consideration,

Sir,

Your most obedient humble servant,

JULIAN PAUNCEFOTE.

THE HON. JOHN SHERMAN,

Etc. Etc. Etc.

[Enclosure.]

759 K.

Extract from a Report of the Committee of the Honorable the Privy Council, Approved by His Excellency on the 31st day of March, 1898.

*Privy Council
Canada*

The Committee of the Privy Council have had under consideration a despatch, hereto annexed, dated 3rd March, 1898, from Her Majesty's Ambassador to the United States, covering copy of a communication from the United States Secretary of

State on the subject of the seizure of, and subsequent proceedings in connection with, the United States fishing schooner *Frederick Gerring, Jr.*

The Minister of Marine and Fisheries, to whom the matter was referred, submits the following observations:—

Briefly, it may be said that the vessel in question was seized by a Canadian Cruiser, for fishing within the territorial waters of Canada, in violation of the Convention of 1818, and the Statutes provided thereunder.

She and her cargo and equipment were condemned in the Vice Admiralty Court of Nova Scotia and forfeited to the Crown, and on appeal to the Supreme Court of Canada the decision of the Court of first instance was confirmed.

The United States Government having through diplomatic channels intervened for a suspension of the penalty, Your Excellency's Government in the exercise of their executive clemency, decided that the vessel should be released and given back to her owners, on payment by them of the costs incurred by Your Excellency's Government, in the Admiralty Court and the Court of Appeal; and also the charges for custody and otherwise in connection with the seizure, as well as a nominal fine for infraction of the law.

The exact nature of this conditional release can perhaps be best understood from an examination of the amount of expenses which would accrue to the owners:—

Legal expenses	\$977.25
Care of vessel 20th January, 1898	239.00
Nominal fine	1.00
	<hr/>
Total	\$1217.25
Credit proceeds sale of fish.....	606.55
	<hr/>
Balance	\$610.70

On the 13th. of January, 1898, the legal representative of the owner of the vessel was informed that the vessel would be handed over on the payment of the sum of \$610.70, and the officer who personally tendered the vessel was informed that his clients had not decided whether to take the vessel back or not.

The despatch at present under review states that in the acceptance of the remission of the penalty of confiscation which Her Majesty's Government graciously ordered, it was believed that such a remedy would afford a complete and satisfactory settlement of the case, but that circumstances have since been brought to the attention of the State Department, which, had they been known at the time, would doubtless have led to further correspondence, and delayed, if not obstructed the acceptance of the remission of the penalty of forfeiture, and the reduction of the fine imposed upon the vessel to a nominal sum, as a sufficient and equitable settlement.

Mr. Secretary Sherman seems to have misapprehended the attitude of Canada in the leniency shown in this case. The conditional release of the vessel was not ordered by Her Majesty's Government, but on the contrary, when it became known to your Excellency's Government that the United States Government had invoked diplomatic intervention, and Her Majesty's Government signified a desire to be informed as to what reply Your Excellency's Government would wish to be returned, it was pointed out that as the appeal was pending in the Supreme Court, it would be advisable to await the result, thus exhausting the legal remedy in Canada, which might have involved the restoration of the vessel.

When, however, the seizure was confirmed, Your Excellency's Advisers, without any pressure from Her Majesty's Government beyond the request above referred to, for an intimation of the nature of the intended reply, voluntarily offered to exert Executive clemency, and remitted the penalty of forfeiture, substituting a fine of one dollar.

The communication then explains that this subsequent information is to the effect that the proceeds of the catch of the vessel, which had been sold by British authorities, had not been taken into account in adjusting the reduced penalty and costs. In this, the Honorable Mr. Sherman has been wholly misinformed, since Your Excellency will observe from the foregoing statement, that a sum of \$606.55, the proceeds of the sale of the vessel's catch of fish, is deducted from the expenses incident to the condemnation and care of the vessel.

The Minister is advised that these fish were sold as soon as

possible for the benefit, and with the consent of both parties, the amount realized being \$813.10 and the expenses attaching to the care and sale \$206.55.

The communication of the United States Secretary of State proceeds that it further appears that the seized vessel, while in the custody of the British Authorities "was treated in such a careless manner that her hull, rigging and outfit have become practically worthless, and their owner has found them to be of no value to him whatever."

Your Excellency will be able to judge of the accuracy of this information, with which Mr. Secretary Sherman has been supplied, when it is pointed out that as much care as possible has been taken of the vessel; a man has been placed specially in charge of her since she was seized, paid at the rate of \$1.25 a day; the seine is in the Government store at Halifax, carefully placed, overhauled and kept salted; the boats are bottom up on the wharf, not damaged in any way; the sails, outfit, running gear, &c. were all dried and marked, and put together in the store, and the stove is in good order.

It is difficult to appreciate under these circumstances, how, if the vessel was worth anything at the time of the seizure, she is now devoid of all value to the owner.

The Minister is of opinion that since the specific objections, which Mr. Secretary Sherman urges, are shown to have no foundation in fact, he will be induced to change his views as to the relief to the owner of the vessel, which the Canadian Government have proposed, and to accept the same in the spirit in which it was tendered.

Mr. Sherman characterizes the action of Canada in the light of "reparation" and proceeds to say, that the order of "restitution" of the vessel "necessarily" involved the "moral obligation" to return it in substantially the same condition as that in which it was seized, which proposition he ventures to believe is not open to disagreement.

The Minister is unable to share this view of the matter, inasmuch as the action of the Canadian officers in seizing the vessel, on being submitted to the British Admiralty, was approved as being in accordance with the practice of the Imperial officials under precisely similar circumstances, and was judicially con-

firmed by the Court of Vice Admiralty and afterwards by the Supreme Court of Canada.

The Minister under these circumstances submits there is no question of reparation for a wrong done; but of the remission of a penalty of forfeiture judicially adjudged—accompanied by conditions which are reasonable, and he ventures to think, should be accepted by the Government of the United States.

The Minister desires also to point out, that every day the expense is increasing in connection with the storage of the articles, and the wages of the watchman in charge of the vessel, and it is desirable that some decision should be reached by the owners.

The Minister cannot believe that after the above explanation, Mr. Secretary Sherman will further press the views he advanced in his despatch now being considered, and in any event he is unable to see what further relief Canada could afford in the premises.

The Committee, on the recommendation of the Minister of Marine and Fisheries, advise that Your Excellency be moved to transmit certified copies of this Minute to the Right Honorable Her Majesty's Principal Secretary of State for the Colonies, and to His Excellency, Her Majesty's Ambassador to the United States.

All of which is respectfully submitted for Your Excellency's approval.

JOHN J. MCGEE,
Clerk of the Privy Council.

EXHIBIT 21.

The British Ambassador to the Secretary of State.

Washington, 1 July, 1898.

SIR,

With reference to previous Correspondence on the seizure of the Schooner *Frederick Gerring, Jr.*, for violation of the Canadian Fishing Laws, I have the honor to transmit to you,

herewith, a copy of an approved Minute of the Privy Council as to the future disposal of the vessel.

As you will doubtless recollect, the vessel was conditionally released by the Dominion Government upon the representations of the United States Government; but has apparently not been claimed by the owners.

As the prolonged custody of this vessel is a cause of expense and inconvenience to the Dominion Government and further delay would be attended by deterioration of the vessel and outfit, I should be glad to learn for communication to the Dominion Government, whether the owners still refuse to accept the conditions of the release.

I have the honour to be with the highest consideration,

Sir,

Your most obedient humble servant,

JULIAN PAUNCEFOTE.

THE HON. W. R. DAY

etc., etc., etc.

[*Enclosure.*]

1436.

Extract from a Report of the Committee of the Honorable the Privy Council, approved by His Excellency on the 17th June, 1898.

In triplicate.

John J. Meyers.

On a report dated 7th June, 1898, from the Minister of Marine and Fisheries, referring to a Minute of Council, approved on the 31st March, 1898, replying to the remarks of Mr. Secretary Sherman on the condemnation and subsequent conditional release of the United States fishing schooner *Frederick Gerring, Jr.*

The Minister observes that the custody and care of this vessel continue to be a source of expense to the Government, and her occupancy of the Government wharf, a source of inconvenience.

The Minister states that he is advised that certain offers have been made for the vessel, but before making any final disposition

of the case, he considers it might be well that enquiries be made of Her Majesty's Ambassador to the United States whether anything further has been heard on the subject from the United States Secretary of State.

The Minister recommends also, if the owners still refuse to accept the conditions of the release authorized, that authority be granted him to dispose of the vessel to the best advantage, without any further delay, which is attended by expense and deterioration of the vessel and her outfit.

The Committee, on the recommendation of the Minister of Marine and Fisheries, advise that Your Excellency be moved to forward certified copies of this Minute to the Right Honourable Her Majesty's Principal Secretary of State for the Colonies, and to His Excellency Her Majesty's Ambassador to the United States.

All of which is respectfully submitted for your Excellency's approval.

JOHN J. MEYERS,
Clerk of the Privy Council.

EXHIBIT 22.

The Acting Secretary of State to the British Ambassador.

No. 1172

DEPARTMENT OF STATE,
Washington, *September 2, 1898.*

HIS EXCELLENCY THE RIGHT HONORABLE

SIR JULIAN PAUNCEFOTE, G. C. B., G. C. M. G.,
etc., etc., etc.

EXCELLENCY:

Referring to previous correspondence concerning the case of the American Schooner *Frederick Gerring, Jr.*, I have the honor to inform you that Captain Edward Morris, the owner of the vessel, asserts that it is irremediably damaged by the detention, and he objects to taking it back in such a worthless condition as to afford him no remedy.

Under these circumstances, the Department begs to suggest that a survey of the vessel be had by the nearest United States Consul, jointly with a representative of the Dominion Government, in order to ascertain the present condition of the vessel.

I have the honor to be, etc., etc., etc.,

J. B. MOORE,
Acting Secretary.

EXHIBIT 23.

Edward Morris to the Secretary of State.

Gloucester, Mass., *March 2, 1899.*

HON. JOHN HAY,
Washington, D. C.

DEAR SIR:—

I send you a chart with the position laid down on it where the Schooner *Frederick Gerring, Jr.*, was fishing when seized, which by the courses and cross-bearings taken by Captain McKenzie of the cruiser *Vigilant* at the time, gives the position of the *Gerring* a good half mile outside of the three mile limit. Both Canadian captains claimed the wind was east south-east and the tide running west by south, and the vessel heading south south-west with the booms guyed well out on the starboard side. The vessel would have to make a little headway so the seine would not swing around the bow. You can see for yourself how utterly impossible it was for the vessel to drift stern-foremost across the wind and tide, towards the shore. Captain Knowlton, of the cruiser *Aberdeen*, who seized the *Gerring*, claimed she was only a mile and three-quarters from Gull Ledge. According to his statement she would have to drift, across the wind and tide, a mile and three-fourths in an hour, and any seaman would know that this would be impossible under those circumstances. Captain Jacobs of the American schooner *Ethel B. Jacobs* took the cross-bearings at the same time, and he claims she was three-fourths of a mile outside of the three mile limit. Chief Justice Strong, one of the ablest judges Canada ever had, now in the Privy Council

in England, said that he supposed the three mile limit was to protect the fish for Canadian fishermen, and that he could not understand how fish admitted caught outside of the three mile limit on the high seas were British property, and even if she had drifted over the line while bailing in her fish, they were undoubtedly American property, and anyone molesting them would be liable to an action. The next question is, what consists of a headland? Gull Ledge is a slate ledge over which the sea breaks in a gale of wind and it lies between where Captain Knowlton said the vessel was and Barren Island. All seamen claim it is no headland. There is a shoal between Gull Ledge and Barren Island called the Nightcap shoal with over three feet of water on it all the time. From the edge of Barren Island to where Captain Knowlton said the vessel was is just three miles and one-fourth. There were eighteen American fishing vessels with two hundred and seventy-five men on board, present at the time, and they all said that the seizure was a terrible outrage, and that the vessel should not have been molested. One reason I send you this chart is, that people say here that some years ago you used to go yachting a great deal and would know all about courses and cross-bearings, and as soon as you look at the chart you can see the courses and position of the vessel. I hope you will be kind enough to look into this case as this is a very serious question.

Yours respectfully,

CAPT. EDWARD MORRIS.

EXHIBIT 24.

The British Ambassador to the Secretary of State.

Washington, March 20, 1899.

SIR,

I referred Mr. Acting Secretary Moore's Despatch No. 1172 of September 2 last respecting the Schooner *Frederick Gerrig Jr.* to the Government of Canada.

I have now the honor to transmit to you a copy of an ap-

proved Minute of the Canadian Privy Council dealing with the suggestions made in that despatch and concurring in the report of the Minister of Marine and Fisheries to the effect that no useful purpose could be served by the survey suggested, and that the vessel should be sold without delay.

In sending me this report, Lord Minto adds that authority has been granted to the Minister of Marine and Fisheries to have the vessel sold at public auction, and I am requested to inform your Government of the action which it is proposed to take, in the matter.

I have the honor to be,
With the highest consideration,
Sir,

Your most obedient humble servant,

JULIAN PAUNCEFOTE.

THE HONORABLE JOHN HAY,
etc., etc., etc.

[*Enclosure.*]

1124 K.

Extract from a Report of the Committee of the Honorable the Privy Council, Approved by His Excellency on the 13th March, 1899.

*Privy Council
Canada.*

In Triplicate.

JOHN J. MCGEE.

The Committee of the Privy Council have had under consideration a Despatch, hereto annexed, dated 7th September, 1898, from Her Majesty's Ambassador to the United States, in which it is intimated that in answer to an enquiry made by His Excellency the Ambassador as to the intentions of the owners of the United States fishing schooner *Frederick Gerring, Jr.*, he learned from the United States Government that the owners asserted that

she was irremediably damaged by detention and demurred to take her back; and that under these circumstances the United States Government suggested that a survey of the vessel be made by the nearest United States Consul jointly with a representative of the Dominion Government in order to ascertain the present condition of the vessel.

The Minister of Marine and Fisheries to whom the said despatch was referred, observes that in his opinion no good could have resulted from any such survey. The offer for the return of the vessel was an offer made purely as a matter of grace and favor on the part of the Crown, and whether the vessel had deteriorated or not could not in any possible way affect the offer, though it might affect the determination of the owners to receive her.

The Minister further observes that by a Minute of Council approved on the 17th June, 1898, referring to the condemnation and subsequent conditional release of the *Frederick Gerring Jr.* it was advised that if the owners still refused to accept the vessel, her tackle, apparel, appurtenances and proceeds of the cargo sold, less the actual costs incurred in her condemnation, authority be granted to the Minister of Marine and Fisheries to dispose of the vessel to the best advantage without further delay.

The Minister submits that the expenses of keeping this vessel are large and becoming larger every season, and he, the Minister recommends that authority be granted him to have the vessel sold at public auction without any further delay.

The Committee concurring, advise that Your Excellency be moved to forward certified copies of this Minute to the Right Honorable the Principal Secretary of States for the Colonies and to His Excellency Her Majesty's Ambassador at Washington.

All which is respectfully submitted for Your Excellency's approval.

JOHN J. MCGEE,
Clerk of the Privy Council.

EXHIBIT 25.

The American Ambassador to the Secretary of State.

No. 565.

AMERICAN EMBASSY,
London, May 9th, 1901.

SIR,

With reference to your Instruction No. 618, of the 27th ultimo, in relation to the case of the Schooner *Frederick Gerring, Jr.*, I have the honor to inform you that, in accordance with your Instruction No. 492, of the 13th of November last, I addressed a note to Lord Lansdowne on the 6th of December last, on the subject, a copy of which is enclosed, and received a reply on the 4th of March last, a copy of which is herewith enclosed, in which his Lordship states that the matter is being considered by the Canadian Government.

I have the honor to be,

Sir,

Your obedient servant,
JOSEPH H. CHOATE.

THE HONORABLE JOHN HAY,
Secretary of State.

Enclosures.

Mr. Choate to Lord Lansdowne, December 6th, 1900.

Lord Lansdowne to Mr. Choate, March 4th, 1901.

[*Enclosure.*]

The American Ambassador to Lord Lansdowne.

AMERICAN EMBASSY,
London, December 6th, 1900.

MY LORD:

Under instructions from my Government, I venture to draw Your Lordship's attention to the case of the *Frederick Gerring, Jr.*, which was referred to in Mr. Bayard's note to Lord Salisbury,

under date of the 6th of November, 1896, and in subsequent correspondence.

It will be seen that on May 25, 1896, the *Frederick Gerring, Jr.*, owned by Captain Edward Morris, of Gloucester, Massachusetts, was seized, off the south coast of Nova Scotia, on a charge of fishing within the territorial waters of Canada. The seizure was made by the ship *Aberdeen*, under Captain Knowlton, of the Canadian Fisheries Protection Service.

Upon a trial had in September, 1896, in the Exchequer Court of Canada for the Nova Scotia Admiralty District, before Judge MacDonald, the vessel and her cargo were condemned.

An appeal to the Supreme Court of Canada was dismissed by a divided court, three judges deciding that the appeal should be dismissed; two of them, one being the Chief Justice, dissenting.

It is not in dispute that the *Gerring* was seining for mackerel, and had set her seine around a school of fish, which was bailed on board from her seine at the time she was seized. It was not denied that when the seine was so set, the *Gerring* was more than three miles from shore; but the vessel had perhaps drifted shoreward; and it was contended and decided by the court, in the majority opinion, that when she was seized, she was bailing fish from the seine within the three-mile limit, and that this act of bailing constituted an act of "fishing" within the meaning of the law.

Mr. Olney, then Secretary of State, advised against an appeal of the case to the Privy Council, and, under his instructions, the above-mentioned note of Mr. Bayard was addressed to Lord Salisbury, appealing to Her Majesty's Government for the remission of the forfeiture.

In line with his suggestion, the Department of State afterwards invoked the good offices of Lord [then Sir Julian] Pauncefote with the Canadian Government to that end. The result was that the forfeiture was remitted, on condition of payment by the defendant of all costs and charges, and the nominal fine of one dollar. The State Department expressed its cordial appreciation to Lord Pauncefote for his intercession, supposing that the matter was satisfactorily arranged.

The result was communicated to Captain Morris, the owner of the *Gerring*, who refused to accept restitution on the con-

ditions named, on the ground that the schooner had become worthless by the want of care of the Canadian Authorities in keeping the vessel.

The Canadian Government traversed Captain Morris' statement as to the alleged injury the vessel had suffered in its keeping, but it declined to appoint, at the request of the Department of State, a joint commission to make a survey of its condition. The negotiations, with a view to a mutually satisfactory adjustment, were thus ended in an apparently hopeless *impasse*; and the Department of State, with the hope that an appeal might still lie from the decision of the Supreme Court, made inquiries with regard to the conditions and the time limit for an appeal to the Privy Council, and ascertained that the appeal would be barred by time.

The Department was not a little embarrassed by the unexpected turn of the affair through the refusal of the restitution by Captain Morris, and appreciated the delicacy of a complete change of its attitude in the treatment of the case, especially after having invoked the exercise of executive clemency in the remission of the forfeiture. But my Government never intended for a moment to concede the right of Her Majesty's Government to seize the vessel for fishing outside of the three-mile limit. Captain Morris has at all times contended that the *Gerring*, at the time of her seizure, was outside the three-mile limit from the Nova Scotia shore. This contention raised two principal issues, to wit, whether the ship, when seized, was inside the three-mile limit; and whether she was, while engaged in bailing fish from the seine aboard the ship, engaged in "fishing," within the contemplation of the treaty.

My Government has exhaustively studied the entire case, and it does not seem to it that the evidence, when dispassionately considered and weighed, establishes a case against the defendant. At least, it can be most candidly and most earnestly maintained that the case was not made out with sufficient clearness on the evidence to justify a forfeiture, odious to the law.

Captain Knowlton testified at the trial that the *Gerring* was seized less than $1\frac{3}{4}$ miles off "Gull Ledge"; that this ledge is $1\frac{1}{4}$ miles long and about $\frac{1}{8}$ mile wide; that the distance from Gull Ledge to Barren Island, which is exactly north, is less than $1\frac{1}{2}$ miles; that the distance from where the *Gerring* was seized to

Barren Island is exactly 3 miles. It would seem to follow that, Barren Island not being a part of the mainland, as will be seen by the accompanying chart, the seizure was made outside the three-mile limit.

On his re-examination, he testified that Barron Island is a mile long and a mile wide; that it is more than one mile and less than $1\frac{1}{4}$ miles from Barren Island to the main coast of Nova Scotia. The distances thus given from the point where the *Gerring* was seized to the nearest mainland are:

From <i>Gerring</i> to Gull Ledge, about.....	$1\frac{3}{4}$ miles
Width of Gull Ledge	$\frac{1}{8}$ "
From Gull Ledge to Barren Island.....	$1\frac{1}{2}$ "
Width of Barren Island	1 "
From Barren Island to coast.....	1 to $1\frac{1}{4}$ miles
<hr/>	
or, over 5 miles,	

from the point where the *Gerring* was seized to the main coast.

Again he testifies from the chart that it was exactly three miles from where the *Gerring* was seized to Barren Island. Now, adding the width of the island, 1 mile, and the distance from the island to the coast, 1 to $1\frac{1}{4}$ miles, still the *Gerring* was seized outside the three-mile limit.

The trial and the condemnation, in the opinion of my Government, could not be upheld on the headland or "King's Chambers" theory, which Professor Lawrence, in his work on International Law, states has been abandoned, or not exercised in recent times, by Her Majesty's Government, and the principle of which, as applied to bays and gulfs whose mouth is over six miles wide, was decided adversely to the British Government in the arbitration in the case of the *Washington*, where the umpire held as follows:

"Taking it for granted that the framers of the treaty intended that the word 'bay' or 'bays' should have the same meaning in all cases, and no mention being made of headlands, there appears no doubt that the *Washington*, in fishing ten miles from the shore, violated no stipulations of the treaty.

"It was argued on behalf of the British Government that by coasts, bays, etc., it is understood an imaginary line, drawn

along the coast from headland to headland, and that the jurisdiction of Her Majesty extends three marine miles outside of this line; thus closing all the bays on the coast or shore, and that great body of water called the Bay of Fundy against Americans and others, making the latter a British Bay. This doctrine of headlands is new, and has received a proper limit in the convention between France and Great Britain of August 2nd, 1839, in which 'it is agreed that the distance of three miles fixed as the general limit for the exclusive right of fishery upon the coasts of the two countries shall, with respect to bays, the mouths of which do not exceed ten miles width, be measured from a straight line drawn from headland to headland.'

"The Bay of Fundy is from 65 to 75 miles wide and 130 to 140 miles long. It has several bays on its coast. Thus the word bay as applied to this great body of water, has the same meaning as that applied to the Bay of Biscay, the Bay of Bengal over which no nation can have the right to assume the sovereignty. One of the headlines of the Bay of Fundy is in the United States, and ships bound to Passamaquoddy must sail through a large space of it. The island of Grand Menan (British) and Little Menan (American) are situated nearly on a line from headland to headland. These Islands, as represented in all geographies, are situated in the Atlantic Ocean. The conclusion is therefore, in my mind irresistible that the Bay of Fundy is not a British Bay, nor a bay within the meaning of the word as used in the treaties of 1783 and 1818."

Captain Knowlton testified that the nearest headland was Liscombe Point (on the east), which was about six miles from where the *Gerring* was taking fish, and that the nearest headland to Westward was Taylor's Head, and that it is 27 miles from headland to headland in a straight line from Liscombe Point to Taylor's Head.

A careful reading of the plaintiff's evidence and of the opinions of the courts does not leave it clear whether the theory on which the case was prosecuted and the ship condemned was, that the *Gerring* was, at the moment of seizure, within the three-mile limit of the nearest Nova Scotia coast, or within the three-mile limit of a line drawn from headland to headland.

The evidence of Captain Knowlton, the first witness at the trial, indicates the former theory, and at the same time shows conclusively that the *Gerring* was outside of that limit.

The evidence of the plaintiff's witnesses following him, to wit: Captains North, Whitman and MacKenzie, states the bearings taken by them at the time when the *Gerring* was seized, and they state, *as a conclusion*, that the *Gerring* was within the three-mile limit, without specifying the grounds of this conclusion.

But considering the theory suggested by the examination of the plaintiff's first witness, Captain Knowlton, it is fair to assume that the witnesses following him were examined on the same theory, and their conclusions could not be reasonably accepted against the specific facts attested by Captain Knowlton and undisputed by them.

No witness testified to the specific fact that the *Gerring* was inside the three-mile limit measured from headland to headland; and it is manifest from the evidence and the accompanying chart that the Government of the United States could not acquiesce in the seizure on that theory, and it is not believed that Her Majesty's Government will seek to justify it on that ground, either in point of law, or in point of fact, in the light of the evidence.

The accompanying chart, already referred to was furnished to my Government by Captain Morris and would appear on its face to be a British chart of the waters and coasts in question. It is the opinion of the United States Navy Department, to which the chart with the pertinent evidence was submitted, that the *Gerring* was undoubtedly seized outside of the three-mile limit; and that she was, when seized, equally outside that limit, whether her position is determined by a direct line drawn from her position to the main coast, or from a direct line drawn from headland to headland.

My Government has appreciated the full force of the argument that might be urged against diplomatic intervention in this case through the failure of Captain Morris to exhaust his legal remedies by appeal. But in this respect the case is anomalous. While the Department of State itself could not appeal the case, it would have rendered financial assistance to Captain Morris to do so, had it not been for the hopeful prospect of an amicable and practical solution of the question in the manner already indicated. When these efforts had finally failed, the right of appeal was lost; and Her Majesty's Government could not graciously plead, as a

bar to intervention, the loss of the appeal through the limitation which expired during and on account of these friendly negotiations.

Under all these circumstances, and in view of the hardship of the case to Captain Morris, my Government cherishes the belief that Her Majesty's Government will not be disposed to urge this point, but should it be insisted upon, my Government would meet it on its merits by the considerations that the seizure of the vessel was an act of supreme administrative authority, which in itself gave ground of diplomatic intervention, since the seizure in such case of United States vessels on the high seas cannot be defended by the judgment of municipal courts; and that, though a sale pursuant to a decree in admiralty may be sufficient, under some circumstances, to protect the title of the purchaser of the vessel condemned and sold, yet if there was a want of jurisdiction there is a perfect claim for restitution or indemnity; that, in case of a seizure on the high seas, the British courts have, it is submitted, no jurisdiction whatever; and therefore the party whose property is seized is under no obligation to prosecute an appeal to higher courts, unless he deem it for his own interest to do so; and in the present case it would not be reasonable to expect an American citizen to incur the cost, and be subject to the delay which would be caused by appealing to a court sitting on the other side of the Atlantic.

Captain Doran, the master of the *Gerring*, testifies that the schooner was built in 1870, and the amount of the damages, by footing the items is—for the vessel, \$3,000, and 134 barrels of mackerel at \$5 to \$10 per barrel. Captain Morris states, however, that the mackerel were worth in Gloucester, at the time of the capture, \$13.50 to \$14.00 per barrel, and that they have not been as low as \$5.00 per barrel for twenty years; and—the amount stated in his behalf, covering all his damages, is mentioned at \$11,549.11.

The amount is not large, yet to Captain Morris the loss is serious, and the question is important from its nature. It has been much agitated, and the prejudicial effects on the popular imagination of the agitation of questions of this character cannot be measured by the amount involved. It is believed that Her Majesty's Government will not fail to appreciate the wishes and efforts of the Department of State to avoid these consequences by an arrangement mutually satisfactory to both parties.

It is not contended or pretended that Captain Morris was an intentional transgressor of the Canadian law. The evidence, on the contrary, would seem to demonstrate his good faith and his expressed wishes at the time to keep outside of the three-mile limit.

It might be mentioned that, in a similar case, my Government, at the request of Lord Pauncefote, made in July, 1899, released six Canadian fishing boats, which had been seized by an American cutter for fishing within the imaginary boundary line at Point Roberts, opposite Vancouver Island.

The fishermen stated that they had no light to guide them, and the trespasses were unintentional; and for this reason the British Embassy asked, on behalf of the Canadian Minister of Marine and Fisheries, for the release of the boats and their equipment, to prevent the ruin of the fishermen through the confiscation of their property.

Security to cover the value of the boats seized having been offered, proceedings were stayed and the boats released, pending further investigation of the facts, July 28, 1899.

The United States Attorney at Seattle, after investigating the case, was satisfied that the Canadian fishermen were not intentional poachers in American waters and did not intentionally violate the laws of the United States. He therefore recommended the dismissal of the case and the release of the boats. In view of this report, the vessels were released and the case dismissed—of all of which Her Majesty's Ambassador at Washington was duly notified on the 25th of August, 1899.

I have the honor of enclosing herewith for your Lordship's information, a copy of the evidence taken at the trial; also a copy of the opinions of the Court of Exchequer, of the Supreme Court of Canada, affirming and dissenting; and of two brief addresses to the Secretary of State by the Senator from Massachusetts and Mr. Moody, a Member of Congress, in behalf of the claimant.

In presenting this case so fully to your Lordship, it is earnestly hoped by my Government that Her Majesty's Government may see their way to securing the payment of a just and reasonable indemnity.

I have the honor to be, etc.

JOSEPH H. CHOATE.

Enclosures :

1. Chart as above mentioned.
2. Copy of evidence.
3. Brief of Senator Hoar.
4. Brief of Mr. W. H. Moody, M. C.

[*Enclosure.*]

Memorandum by Senator Hoar.

For the consideration of the Secretary of State, relating to the claim of Captain Edward Morris of Gloucester, Mass., against the Government of Great Britain for the unlawful seizure detention and condemnation of the fishing vessel *Frederick Gerring, Jr.*, the property of said Edward Morris.

The facts as claimed by Captain Morris are stated in his letter to the Honorable John Sherman, Secretary of State, dated June 12, 1897, the original of which is on the files of the Department. For convenience a copy of that letter is hereto annexed.

The point stated in Captain Morris's letter that the rock therein referred to could not lawfully be considered as the terminus of a line drawn from one headland to another for the purpose of determining the three-mile limit from the shore, as described in the Convention of 1818, does not seem to have been taken in the Canadian court.

Captain Morris's statement that the vessel and fish captured had been depreciated in value through the negligence of the Canadian government so that the property returned to him was practically worthless is denied, it is understood, by that government.

It is also understood that the Department of State has expressed to the government of Great Britain its gratification in view of the action of the Canadian authorities in ordering the release of the vessel.

From Captain Morris's statement it appears that the *Gerring* being without question on the high seas, enclosed a catch of mackerel in her purse seine. She was on the high seas when captured unless being within three miles of a line drawn to the barren

rock above named brought her within three miles of the shore and so within the prohibition of the treaty of 1818;

That she was not fishing unless the taking fish so enclosed from the nets be fishing;

That she only got within the territory claimed by the Canadian Government to be within the three-mile limit by drifting therein involuntarily after the fish were enclosed in her nets.

Now on these points it is insisted with great confidence:

First. The vessel was never within the three-mile limit until the time of its capture. The government of the United States has never submitted to the British headland theory. On the contrary, that question having been submitted to arbitration by the two governments has been decided in favor of the United States.

Next. The vessel was never within the three-mile limit in accordance with any reasonable application of the headland theory, because the barren rock above mentioned is not a headland within any reasonable claim.

Next. A foreign vessel drifting involuntarily from the high seas into the territory or even into the port of any nation does not thereby become subject to its jurisdiction.

Next. The acts complained of are not fishing within the sense of the treaty, as seems reasonably established by the dissenting opinions of two of the five Canadian judges, one of whom was the Chief Justice.

Next. If in any case it would be the duty of an American given under such circumstances to exhaust his remedy in the judicial tribunals of the country seizing the vessel before resorting to diplomacy for a remedy, there can be no such obligation in the present case.

1. The question what is fishing as prohibited by the treaty cannot be interpreted by one party to the treaty without the assent of the other.

2. The validity of the capture of an American vessel on the high seas cannot be determined by the captor either through his courts or any other authority.

3. The question of the limits of the high seas or the limits of the three-mile line cannot be decided by one of the parties to the treaty as against the other.

4. If it were in any case reasonable to require an American citizen against whom there has been a judgment of an inferior foreign court to exhaust his remedy by appeal or otherwise in the higher courts such a requirement is not reasonable in the present case, where the appeal to the Privy Council, tried and heard in a distant place, would involve great and ruinous delay and expense out of all reasonable proportion to the amount at stake. The party demanding respect for its judicial tribunals in such cases must afford a reasonable opportunity for a remedy in those tribunals, and it seems to me clearly unreasonable to require an American citizen who is arrested or whose vessel is arrested in the waters of Nova Scotia to pursue his remedy for a few thousand dollars to the Privy Council sitting in London, a remedy which, as is notorious, imposes on the person who seeks it great cost and unreasonable delay.

A highly intelligent friend has collected some authorities and prepared some observations in support of these several propositions, which will be found accompanying this communication.

I have the honor to be, with high respect,

GEO. F. HOAR.

THE HONORABLE

THE SECRETARY OF STATE.

[*Enclosure.*]

Memorandum by Honorable W. H. Moody.

The *Frederick Gerring, Jr.*, was an American fishing vessel owned in Gloucester, Massachusetts, by Edward Morris. She was seized by the Canadian steamship *Aberdeen* for unlawful fishing within three marine miles of the coast of Nova Scotia, condemned by the Judge in Admiralty for the Nova Scotia Admiralty District, whose finding was affirmed by the Supreme Court of Canada in a decision in which three of the Justices concurred and from which two of the Justices including the Chief Justice, dissented.

This memorandum is submitted in behalf of Edward Morris, the owner of the *Gerring*, who complains that the condemnation and seizure were in violation of his rights as an American citizen under the law of nations and the Convention between Great Britain and the United States relating to the Northeastern fisheries.

Before stating the facts of the case it is well to refer to the Convention concluded October 20, 1818, between the two powers and the conflicting construction placed upon it by them. That Convention in its first article defined the rights of American fishermen in the waters of His Britannic Majesty's dominion in America, giving to them the right of inshore fishing on certain named parts of the coasts of Newfoundland and Labrador. It contains the following renunciation:

"And the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America not included within the above limits."

This Convention although it has been since twice temporarily modified by other treaties now remains the instrument by which, together with the International law upon the subject, all our fishermen are governed.

The circumstances of the case under consideration were these. The *Gerring* was lying prepared to fish off the southern coast of Nova Scotia, some six and a half miles from Liscombe Light. Our fishermen have not the right of inshore fishing on this part of the coast.

The Canadian sailing cruiser *Vigilant* was in the neighborhood, together with the *Margaret Haskins*, an American fishing vessel which was lying a hundred yards inshore from the *Gerring*. The captain of the *Haskins* rowed to the *Vigilant* and inquired of her commanding officer whether they were without the three-mile limit. He received an affirmative answer which was communicated to the captain of the *Gerring*. The *Haskins* then seized a school of mackerel and went away. The *Gerring* seized a school of mackerel at a place conceded by the Crown to be without

the three-mile limit, and used for that purpose what is known as a purse seine. (A purse seine is one where the fish are surrounded by the seine whose bottom is then closed by drawing a purse line which clasps the seine tightly as a purse is closed.) The seine was then attached to the *Gerring* and preparations made to remove the mackerel to the vessel. Up to this point everything was done without the three-mile limit. The crew of the *Gerring* then began to remove the mackerel from the seine to the deck of the vessel. It is sometimes the custom to allow the fish in the seine to remain there for several days taking part out each day for the purpose of dressing and salting them. While thus removing the fish from the seine the *Gerring* was seized by the Canadian steamship *Aberdeen*. Both the *Vigilant* and the *Aberdeen* were public vessels of the Canadian Government charged with the duty of enforcing the fishery laws. It was claimed by the crown at the trial that after the fish were taken and secured in the seine and while the crew of the *Gerring* were removing them to the deck of the vessel she had drifted within the three-mile limit and upon this ground her seizure was justified and her condemnation was sought. Upon the other hand the *Gerring* contended that in point of fact she had not drifted within the three-mile limit and that it was impossible for her to do so without drifting against the action of the wind and tide, and introduced a large amount of testimony in support of this contention. The trial court, however, found that while the fish were seined and secured in the seine outside the three-mile limit the vessel had drifted within that limit while removing the fish. It is respectfully submitted, however, that as the rights of our citizens upon the high seas by the common law of nations are involved, this Government is not bound by the finding of fact of the Canadian court.

In the Supreme Court of Canada Mr. Justice Wynne in an opinion concurred in by the Chief Justice held that upon the facts found by the trial court the *Gerring* had neither gone beyond her treaty rights nor violated the laws of the Dominion of Canada. Mr. Justice Sedgwick was of opinion that at the time of seizure the *Gerring* was "fishing" within the meaning of the Convention of 1818 and the Canadian laws. In this conclusion Mr. Justice Giroward [Girouard] and Mr. Justice King ("not without hesitation and doubt") concurred. Accordingly by a majority of one the

condemnation of the *Gerring* was affirmed. Subsequently, through the interposition of this Government, the penalty of forfeiture was remitted and the vessel and its contents were offered to the owner upon the payment of costs. This interposition of our Government and action of the British Government was made without the knowledge that the so-called "headland" question was involved in the case. It was supposed to be a satisfactory conclusion of the subject. Upon investigation it has been found that through neglect the vessel and its contents have been ruined while in the custody of the Canadian officials. The vessel has not been taken back by the owner and she is not worth the taking. It is respectfully submitted upon the foregoing facts that this Government ought not to acquiesce in the view that the transaction of unloading fish within the three-mile limit which have been already secured in a seine on the high seas is a violation of the Convention of 1818. The question is not only of importance to the owner but as well to all American fishermen pursuing their avocation upon the high seas near the Canadian coast but without the three-mile limit.

There is, however, in the case a principle involved transcending in general importance that already referred to. For some reason it was not brought to the attention of the Supreme Court of Canada and has not received its consideration. It may well be claimed that if it had received the consideration of that court the result would have been different.

Since the conclusion of the Convention of 1818, Her Majesty's Government and our own have differed and continue to differ as to its proper interpretation. The British Government has asserted that from bays more than six miles wide indenting British shores American fishermen were excluded by the Convention of 1818. In other words that however wide the bay might be a line should be drawn from headland to headland and from the waters within three miles of this line American vessels were excluded by the terms of the Convention. On the other hand our Government has claimed that in the case of bays more than six miles wide our fishermen were within their rights if they remained more than three miles away from the coast of the bay. Neither Government has up to the present receded from its position. So far as known the only seizure made by the British Government for violation

of what may be shortly termed the "headland" claim was that of the American fishing vessel *Washington* seized in the Bay of Fundy while fishing more than three miles from the shore. A claim was made by our Government for damages for this seizure and under the Claims Convention of the eighth of February, 1853, it was considered and the umpire decided that the seizure was unlawful.

The coast of Nova Scotia near where the *Gerring* was seized is irregular in its outline. The two extreme projections of the mainland in the neighborhood are Liscombe Light to the east of where the *Gerring* lay, and Taylor's Head to the west. A line drawn from those two points would be approximately thirty miles in length. The inshore waters included within this line are not and can not be denominated a bay. At the time of the seizure, even assuming that the *Gerring* was where she was claimed by the Crown to be, she was four and one-quarter miles outside the line thus drawn and very much more than that from any point upon the mainland of Nova Scotia. There was, however, within one and three-quarters miles from the point at which it is claimed the *Gerring* was seized and toward the Nova Scotia shores an isolated ledge called Gull Ledge which in the sailing directions issued by our Government is described as "composed of two bare ridges of slate of thirty feet high and separated only by a narrow gully which is wide enough to afford shelter to a boat." The ledge is uninhabitable and without vegetation. When the sea is high it breaks over the top of these ridges of slate. It is only by considering this isolated piece of rock which is three and three-quarters miles from the nearest point of the mainland of Nova Scotia as a part of the "coast" of Nova Scotia that it can be pretended that the *Gerring* was exceeding her rights under the treaty or violating the Canadian law. Upon these considerations, none of which were brought to the attention of the Supreme Court of Canada, it is respectfully submitted that the *Gerring* was upon the high seas and not "within three marine miles of any of the coasts, bays, creeks or harbors of His Britannic Majesty's Dominions in America," and that whatever may be said of the assertion heretofore made by the British Government that in the case of bays more than six miles wide the line of exclusion should be drawn three miles from a line drawn from headland to headland,

it has never yet been claimed that an isolated ledge more than three miles from the mainland should be taken as a point of departure of the exclusionary line. Such a contention would be dangerous in the extreme to our fishing vessels and one which we submit our Government ought to protest against.

The damages suffered by Captain Morris by this seizure, entirely exclusive of the costs and expenses incurred in litigation are \$11,549.11. This amount it is contended the Canadian Government should pay to him.

[*Enclosure.*]

Lord Lansdowne to the American Ambassador.

FOREIGN OFFICE,
March 4th, 1901.

YOUR EXCELLENCY.

With reference to my note of the 20th of December last, relative to the seizure of the United States Vessel *Frederick Gerring, Jr.*, on the charge of fishing in the territorial waters of Canada, I have the honour to state that the question has been referred to the Canadian Government.

On receipt of their reply, a further communication will be addressed to Your Excellency.

I have the honour to be, &c.,

(Signed) LANSDOWNE.

HIS EXCELLENCY

THE HONORABLE JOSEPH H. CHOATE,
&c., &c., &c.

EXHIBIT 26.

The American Ambassador to the Secretary of State.

No. 641.

AMERICAN EMBASSY,
London, August 15, 1901.

SIR,

With reference to my Despatch No. 565, of the 9th of May last, in relation to the case of the Schooner *Frederick Gerring, Jr.*, I have the honor to enclose herewith a copy of a Note I have received from Lord Landsdowne, dated the 12th instant, which states that the Government of the Dominion cannot admit that the seizure of the above-named vessel was illegal, and that His Majesty's Government feel that the claim for compensation is one which they cannot entertain.

I have the honor to be,

Sir,

Your obedient servant,
JOSEPH H. CHOATE.

THE HONORABLE JOHN HAY,
Secretary of State.

Enclosure: Lord Landsdowne to Mr. Choate, August 12, 1901.

[Enclosure.]

Lord Lansdowne to the American Ambassador.

FOREIGN OFFICE,
August 12, 1901.

YOUR EXCELLENCY:—

The Secretary of State for the Colonies did not fail to refer to the Government of Canada Your Excellency's note of the 6th of December last, relative to the case of the United States vessel *Frederick Gerring, Jr.*, condemned on the 5th of August, 1896, in Nova Scotia Admiralty District of the Exchequer Court of Canada to forfeiture on a charge of fishing within the territorial waters of Canada.

Being now in possession of the views of the Dominion Government on the subject, I have the honor to offer the following observations.

Your Excellency, while claiming compensation, admits that Mr. Olney at the time he was Secretary of State for the United States advised against an appeal to the Privy Council and under his instructions Mr. Bayard made representations to Her Majesty's Government with a view to obtain remission of the forfeiture, the result being that the Canadian Government offered in the circumstances and as an act of grace and favor, to remit the forfeiture on condition of the payment by the defendant of all costs and charges, together with a nominal fine of one dollar (\$1.00). Of this offer the State Department expressed cordial appreciation, although it was afterwards refused by the owner of the vessel.

Your Excellency says that the Department of State and the United States was not a little embarrassed by the unexpected refusal of the owner to accept the offer which the Dominion Government, as an act of grace and favor had made, and that "it appreciated the delicacy of a complete change of its attitude in the treatment of the case, especially after having invoked the exercise of executive clemency in the remission of the forfeiture," but you add that your "Government never intended to concede the right of Her Majesty's Government to seize the vessel for fishing outside the three-mile limit."

There was, however, clearly no thought of such a concession either having been asked or given, because there never was any serious doubt raised in the diplomatic discussions respecting the seizure that it was made within the three-mile limit. It was not because of any doubt as to the position of the vessel at the time of the fishing for which she was condemned that the clemency of the Crown was asked or granted, but rather because it was contended that the trespass was involuntary and not deliberate.

The question of the exact position of the vessel at the time of the seizure was distinctly raised at the trial, and was as distinctly decided by the Court of Vice Admiralty, and afterwards confirmed unanimously by the Court of Appeal.

It was never suggested, so far as His Majesty's Government are aware, at the trial or on the appeal that the Islands in the

vicinity of which the *Frederick Gerring, Jr.*, was found fishing were not part of the territory of the Province of Nova Scotia, and it is believed with great confidence that no such contention can be maintained.

The introduction moreover of the Headland question into the argument appears irrelevant, as it had not at the trial, and has not now, any bearing on the question whether the vessel was legally seized and condemned. The condemnation of the ship was not sought on any such ground, and it is not necessary now to invoke it. The Crown asked that the vessel should be condemned because she was found to be illegally fishing within three miles of Gull Rock or Island, which was part of the territory of Nova Scotia, and the Vice Admiralty Court found that to be a fact, while the Court of Appeal unanimously upheld such decision.

With regard to the facts in the case now under discussion, the following points must be considered.

There are two questions presented by the evidence, first, whether the schooner when arrested was within the three-mile limit of Nova Scotia, and secondly, whether she was fishing at that time. Both these questions were determined adversely to the schooner.

Chief Justice MacDonald, who tried the case below, and the five judges who heard the appeal, concurred in the view that the vessel was, at the time of the seizure, within the three-mile limit. No other conclusion is reasonably open upon the evidence.

The measurements taken show the vessel to have been within less than a mile and three-quarters from the Gull Islands, which are conspicuously marked upon the chart, and lie about thirty feet apart. The inner island is larger than George's Island, in Halifax Harbor, measuring four hundred yards long, one hundred yards wide and forty two feet high. There was at the time a fisherman's shanty there with a stove in it and a large number of lobster traps. There was a fair amount of vegetation on the Island, and a patch of hay land about one hundred yards long by about fifty yards wide with a spring of fresh water. The soil averaged about one foot in depth, consisting of brown loam. At no time, even during the heaviest storm, would waves break over this Island. These statements are supported by the evidence of Commander Spain of the Court of Appeal.

The schooner was seized by Captain Knowlton of the cruiser *Aberdeen*, who saw the crew of the schooner bailing fish from the seine on board the schooner, and took bearings from the place where they were doing so. From this place the north-west point of Big White Island bore W. N. W. and Liscombe Light bore N. E. $\frac{1}{2}$ N. This place was less than a mile and three-quarters from Gull Islands off the coast of Nova Scotia by actual measurements. (See the evidence of Captain Knowlton, of Captain Arthur Morin, 1st Officer of the *Aberdeen*, of Levi Whitman, 3rd Officer of the *Aberdeen*, of Commander Spain, of Ernest Kinney, 1st Officer of the cruiser *Acadia* and of William J. Milne, 2nd Officer of the cruiser *Acadia*). The schooner took no bearings and evidently no pains to ascertain her position during the fishing. It is not controverted that immediately after the seizure Captain Doren, master of the schooner, told Mr. Bennet, 3rd officer of the *Aberdeen*, that "if he was put on oath he would not swear if she was inside or outside of the limits; that he had an old chart there that he could not depend on."

Captain Angrove, who is a master mariner of considerable experience upon the coast, and who moreover was called for the defense gave as his opinion, in view of the time and place of the seizure, and the conditions of the weather assumed to have existed at the time, that the schooner would not have drifted to the position where she was seized if she had netted the fish outside the three-mile limit, and his opinion is supported by several fishermen who were called upon the same point. Captain MacKenzie of the cruiser *Vigilant* testifies, on the other hand, that in his opinion the schooner would drift in, and that in fact he himself had drifted in at the same time.

The main fact, however, that the schooner was at the time of the seizure lying within a mile and three-quarters of the land was established by the concurrent testimony of many witnesses, and was not controverted. None of the six judges who considered the evidence had any difficulty in finding that the vessel was seized in that position.

From the tenor of Your Excellency's note it would seem that the United States Government do not admit that Gull Ledge is part of the coast of Nova Scotia, but it can scarcely be contended that the territorial waters of Canada do not extend three

miles seaward from the Gull Islands, as such a contention would be at variance with the position taken by the State Department at Washington, so far as concerns the eastern coast of North America, and with the accepted authorities of international law.

It is stated in a letter from Mr. Bayard, written on the 28th May, 1886, as United States Secretary of State, to Mr. Manning, then Secretary to the Treasury, and quoted in "Wharton's International Law Digest, pages 107-9," that the position of the State Department "has uniformly been that the sovereignty of the shore does not, so far as territorial authority is concerned, extend beyond three miles from low water mark, and that the seaward boundary of this zone of territorial waters follows the coast of the mainland, extending where there are islands, so as to place around such islands the same belt."

"This necessarily excludes the position that the seaward boundary is to be drawn from headland to headland, and makes it follow closely, at a distance of three miles, the boundary of the shore of the continent or of adjacent islands belonging to the Continental Sovereign."

"This position," Mr. Bayard adds "was not taken by the Department speculatively, but advanced at periods when the question of peace and war hung on the decision."

The same view as to the extent of territorial jurisdiction is held by His Majesty's Government and has been supported on various occasions by the decisions of the British Courts. To one of these I refer more specifically as emphasising this contention.

In the case of the *Anna*, 5 Christopher Robinson's Admiralty Reports, page 373, decided by Lord Stowell in 1805, the ship under American colors with a cargo of logwood and about thirteen thousand dollars (\$13,000) on board, bound from the Spanish Main to New Orleans, was captured by the *Minerva*, a British Privateer, near the mouth of the River Mississippi, and a claim was made under the direction of the American Ambassador for the ship and cargo as taken within the territory of the United States at a distance of a mile and a half from the western shore of one of the islands at the mouth of the principal entrance of the Mississippi. The question raised was whether these islands formed part of the territory of the United States, and the Court had no difficulty, on reasoning which appears irresistible, in hold-

ing that they were part of such territory. In the course of his judgment, Lord Stowell says:

“Consider what this difference would be if lands of this description were not considered as appendant to the mainland, and as comprised within the bounds of territory. If they do not belong to the United States of America, any other power might occupy them; they might be embanked and fortified. What a thorn would be this in the side of America! It is physically possible at least that they might be so occupied by European nations, and then the command of the river would be no longer in America but in such settlements. The possibility of such consequence is enough to expose the fallacy of any arguments that are addressed to show that these islands are not to be considered as part of the territory of America. Whether they are composed of earth or solid rock, will not vary the right of dominion, for the right of dominion does not depend upon the texture of the soil.

“I am of the opinion that the right of territory is to be reckoned from these islands.”

It is clear, therefore, following the position taken by the State Department at Washington, and the Principles of International Law generally accepted, that Gull Islands or Rocks form part of the territory of Nova Scotia, and that the *Frederick Gerring, Jr.*, was seized one and three-quarter miles off the coast of a part of that Province, while fishing there contrary to the provisions of the Treaty of 1818.

The legal remedies of the owner of the ship, if he thought she has been illegally seized, were not, on the advice of the United States Government, exhausted. If there had been any doubt whatever as to whether the vessel was found fishing within three marine miles of the coast, it is probable that the United States Secretary of State would not have advised that no appeal should be taken to Her Majesty's Privy Council. When the United States Government asked whether the right of appeal to the Privy Council existed, and the time limit thereof, they were informed that the prerogative right of the Crown to grant an appeal as a matter of favor did exist in this case.

With regard to the contention that Captain Morris was not an international transgressor of the Canadian Law, the Canadian Government have already in answer to an application based on that ground, made an offer which the owner of the vessel chose

to reject, but of which the Government of the United States expressed their warm appreciation.

The Dominion Government recognized the action of the United States Government, referred to in Your Excellency's Note, in releasing six Canadian fishing boats, seized by an American cutter, for having crossed the imaginary boundary line in the neighborhood of Point Roberts, on the Pacific Coast, in the summer of 1900. There would appear, however, to be some misapprehension with regard to these seizures, which were not made for any alleged infraction of Fishery Laws, as stated in Your Excellency's Note, but under the Customs Laws of the United States, for hovering near the coast. The boats in question, mere open fishing craft, had drifted across the imaginary boundary line, without any intention of going into United States waters and without any means of taking observations or otherwise ascertaining that they had so crossed the line. The courtesy of the United States Government in releasing them was fully appreciated and acknowledged. The Canadian Government on their part in 1891 made a similar release of six United States fishing boats seized in the waters of Passamaquoddy Bay, because it appeared that they had drifted into Canadian waters in a fog, and had unwittingly trespassed, and many instances might be cited wherein during late years the most generous interpretations have been put upon Canadian Laws and regulations in favor of United States fishing vessels.

It can thus with justice be said that Canada has not yielded to the United States in courtesy and leniency in this regard. So far, however, as the present case is concerned the Government of the Dominion cannot admit that the seizure of the *Frederick Gerring, Jr.*, was illegal, and His Majesty's Government, much as they would wish to meet the views expressed in Your Excellency's Note, feel that the present claim for compensation is one which they cannot entertain.

I have the honor to be, with the highest consideration,
Your Excellency's most obedient,
humble servant

LANDSDOWNE.

HIS EXCELLENCY

THE HONORABLE J. H. CHOATE,
&c., &c., &c.,

EXHIBIT 27.

Edward Morris to the Secretary of State.

Gloucester, Mass., Oct. 7, 1901.

HON. JOHN HAY,
Secretary of State.

Dear Sir: I have just received from Hon. Wm. H. Moody some correspondence, written to Hon. J. H. Choate by Hon. Mr. Lansdowne, relating to the case of the Sch. *Frederick Gerring, Jr.* On reading this letter, it seems to me that it was written in Canada and only signed by Hon. Mr. Lansdowne. He speaks particularly about the fact that the Canadian Government offered me the vessel back and that I refused the offer. What was there for me to accept, they had not taken care of anything, consequently everything was ruined, and they also had Court expenses amounting to twelve hundred and seventeen and thirty-five hundredths dollars (\$1217.35) and charges for selling mackerel of two hundred and six dollars (\$206) which I would have had to pay. They tried to make our Government believe, through the British Ambassador, that everything was in first class condition, but when the seines and boats were sold the prices received showed how true the statement was. A seine worth one thousand dollars (\$1,000) sold for forty dollars (\$40); a boat worth two hundred seventy-five dollars (\$275) sold for twenty-five dollars (\$25); two more boats sold for ten dollars (\$10) apiece and the Government had to take the vessel for a light-ship. In the letter he speaks of Com. Spain and the measurements of Gull Ledge which he took, where Com. Spain stated that the ledge was 42 feet high, the "English Coast Pilot" in its description calls it, "a barren ridge of slate, thirty feet high." The height of thirty feet results from a pinnacle of rock at the western end of the ledge, which rises high above the rest of the ledge. The captain of the steamer which seized the *Gerring* testified that he took the cross bearings of the *Gerring* at the time of the seizure and put them on the chart. The first officer testified that he, the first officer, took the cross bearings and put them on the chart while the Captain walked on the bridge.

This shows that there was a false statement made somewhere. If he the captain, was sure that the vessel was inside of the three mile limit, why did he not let my captain do as he wished when he said, "Let me take my men, my boat, your officers, my log or yours, or both and measure the distance to Gull Ledge as I know I am more than three miles away." I am tired of seeing those false statements introduced as proof by the Canadian Government, through the English Government, and I should think that a man holding such a position as the Hon. Mr. Lansdowne does would look to the truth of such statements before signing them.

Hoping that our Government will not listen to any such false statements, I remain,

Yours truly,

EDWARD MORRIS,
W. M.

EXHIBIT 28.

Affidavit of Edward Morris.

In re CLAIM OF EDWARD MORRIS,
Owner of Schooner *Frederick Gerring, Jr.*

UNITED STATES OF AMERICA.

Commonwealth of Massachusetts, ss.:

I, Edward Morris, of Gloucester, in the County of Essex, in said Commonwealth of Massachusetts, on oath depose and say that I was the sole owner of the American fishing schooner *Frederick Gerring, Jr.*, of the port of Gloucester aforesaid, her tackle, apparel, furniture and appurtenances and of the nets, boats, stores and all other effects on board said vessel at the time of her wrongful seizure by the Canadian Cruiser *Aberdeen*, Captain Knowlton, Commander, on the twenty-fifth day of May in the year eighteen hundred ninety-six off Liscombe on the southern coast of Nova Scotia, and at the time of the subsequent wrongful

confiscation of said vessel and cargo by the Canadian courts, and that the damages sustained by me by such wrongful seizure and confiscation were as follows:

1. That the fair value of the vessel and her tackle, apparel and equipment, including seine, boats, nets, fishing equipment, stores and other effects on board..... \$5,251.50 as follows:

a. Value of vessel with her sails, rigging, cables, anchors and fittings	\$3,000.00
b. Value of seine and purse line....	1,055.00
c. Value of seine boat.....	275.00
d. Value of two dories.....	40.00
e. Value of rigging for seine boat..	40.00
f. Value of seine boat's painter and shackle	19.00
g. Value of running lines.....	9.00
h. Value of two large dip nets and six small ones	16.00
i. Value of forty (40) hogshead of salt on board.....	70.00
j. Value of one hundred fifty-two (152) empty barrels	114.00
k. Value of ice house.....	150.00
l. Value of bait-mill	18.00
m. Value of eight (8) kealers.....	12.00
n. Value of six (6) cooper's adze..	3.00
o. Value of ten (10) flagging irons	2.50
p. Value of provisions on board..	225.00
q. Value of crew's outfits on board	188.00
r. Value of medicine chest on board	15.00
	<hr/>
	\$5,251.50

2. Fair value of the mackerel actually taken and on board said schooner at the time of seizure, including

the forty (40) barrels washed overboard while the vessel was in tow by said Cruiser *Aberdeen*, and the one hundred eighteen (118) barrels sold in a damaged condition by the Canadian Government..... \$1,639.00
as follows:

a. Value of one hundred eighteen (118) barrels of mackerel at \$10.50 per barrel	\$1,239.00
b. Value of forty (40) barrels of mackerel at \$10 per barrel....	400.00
	<hr/>
	\$1,639.00

3. Loss sustained from breaking up of voyage by
seizure \$2,100.00
as follows:

a. Two hundred (200) barrels of mackerel which would have been taken except for seizure and consequent interruption of voyage, at \$10.50.....	\$2,100.00
--	------------

4. Expenses incurred and paid in connection with
the confiscation proceedings in Canadian Courts at Hali-
fax and Ottawa, including fees of counsel and wit-
nesses, personal travelling expenses and printing of
record \$1,421.11
as follows:

a. Payment to William F. McCoy, Esq., for his disbursements and legal services in Exchequer Court at Halifax	\$808.11
b. Paid for printing record and en- tering appeal in Supreme Court of Canada	130.00

c. Paid W. F. McCoy, Esq., services as counsel in appeal case at Ottawa	\$250.00
d. Personal travelling expenses, 2 trips to Halifax in respect to con- fiscation proceedings	78.00
e. Paid to John J. Flaherty, Esq., of Gloucester, services as counsel in respect to seizure of vessel and confiscation	105.00
f. Paid personal travelling expenses— 2 trips <i>in re</i> seizure of vessel . . .	50.00

5. Damages sustained by loss of use of vessel and equipment during the remainder of mackerel season in the year 1896 and of inability to procure and fit out, before the close of the season or the run of mackerel had ended, another vessel to take the place of the *Frederick Gerring, Jr.*, estimated at \$2,000.00

6. Expenses incurred and paid in prosecution of claim at Washington in District of Columbia 231.00
as follows:

a. Travelling expenses to Washington and return	\$ 54.00
b. Telegrams and typewriting docu- ments and letters	50.00
c. Travelling expenses, 2 trips to Washington and return	127.00
	<hr/>
	\$231.00

\$12,642.61

7. Interest on the amount of loss or damage from January 1, 1897.

EDWARD MORRIS.

COMMONWEALTH OF MASSACHUSETTS, GLOUCESTER, Dec. 16,
1912.

Essex, ss.:

Then personally appeared the above-named Edward Morris, known to me to be the person named in the foregoing affidavit, and subscribed the same in my presence, and made oath that the statements therein contained are true, to the best of his knowledge, information and belief, before me.

FREDERIC A. SHACKELFORD

(Seal.)

Notary Public.

EXHIBIT 29.

Affidavit of Clarence A. Elwell.

UNITED STATES OF AMERICA.

Commonwealth of Massachusetts, ss.:

Clarence A. Elwell of the City of Gloucester, in said Commonwealth, deposes and says—That on the fifteenth day of May, 1896, he was, and for several years prior thereto had been, a member of the firm of Peterson and Elwell (composed of Matthew Peterson and Clarence A. Elwell aforesaid) engaged in the business of manufacturing, repairing and storing seines at Gloucester aforesaid; that said firm furnished the mackerel purse-seine and appurtenances used, during the spring of the year 1896, on the schooner *Frederick Gerring, Jr.*, registered at the port of Gloucester aforesaid and owned by Captain Edward Morris of said City; that said firm delivered said purse-seine and appurtenances on board said schooner *Frederick Gerring, Jr.*, on or about said fifteenth day of May, 1896, in good order and condition for use; that your deponent is informed and believes that said purse-seine and appurtenances so furnished and delivered by said firm was the same purse-seine and appurtenances owned by said Edward Morris which were seized, with said schooner *Frederick Gerring, Jr.*, by

the Canadian steam cruiser *Aberdeen* on the twenty-fifth day of May, 1896, off the Nova Scotia between Liscombe Light and White Island; that your deponent knows the value of the said seine and appurtenances, and in his opinion the fair value of said seine and appurtenances, not including the purse line, at the time of said seizure, was one thousand dollars (\$1,000), and that the value of the purse line attached to said seine was fifty-five dollars (\$55).

CLARENCE A. ELWELL.

Subscribed and sworn to before me at Gloucester, Massachusetts, on this eighth day of November in the year one thousand nine hundred and twelve.

FREDERIC A. SHACKELFORD,
Notary Public.

(Seal.)

EXHIBIT 30.

Affidavit of John W. McFarland.

UNITED STATES OF AMERICA.

Commonwealth of Massachusetts, ss.:

I, John W. McFarland of Gloucester in the County of Essex in said Commonwealth of Massachusetts, on oath depose and say that I am, and for more than thirty-eight years have been, the master and part owner of a fishing vessel sailing from the port of Gloucester aforesaid;

That I was well acquainted with the schooner *Frederick Gering, Jr.*, of said port owned by Edward Morris, and with the condition and equipment of said vessel, and that in my opinion, the fair value of said vessel with her sails, rigging, cable, anchors and interior furnishings, was, in May, 1896,
thirty-five hundred dollars;

That I was engaged in the mackerel fisheries in the spring and summer of 1896 and knew the market price of mackerel in

Gloucester aforesaid during the months of May and June of said year, and that the fair market price of mackerel, in fishermen's order, on or about the fifteenth day of June A. D. 1896, when the voyage of said schooner *Frederick Gerring, Jr.*, would have probably ended except for her seizure by the Canadian authorities was Ten Dollars and Fifty Cents (\$10.50) per barrel.

JOHN W. MCFARLAND.

Subscribed and sworn to before me this sixteenth day of December, A. D. 1912.

FRED E. MORRIS,
Notary Public.

(Seal.)

EXHIBIT 31.

Affidavit of Fred L. Davis.

UNITED STATES OF AMERICA.

Commonwealth of Massachusetts, ss.:

I, Fred L. Davis of Gloucester in the County of Essex and Commonwealth of Massachusetts, on oath depose and say that I was, during the year 1896, and for several years prior thereto had been, the owner or part owner of several fishing vessels sailing from the port of Gloucester aforesaid, and that I had knowledge of the fair market value of fishing vessels and their equipment;

That I was well acquainted with the Schooner *Frederick Gerring, Jr.* of said port, owned by Edward Morris, and with the condition and equipment of said vessel, and that in my opinion, the fair value of said vessel with her sails, rigging, cable, anchors and interior furnishings was, in May, 1896,
Thirty-five Hundred Dollars;

That some of the vessels so owned and operated by me during the year 1896 were engaged in the mackerel fisheries, and I knew the market price of mackerel in Gloucester aforesaid during the months of May and June of said year, and that the fair market

price of mackerel, in fishermen's order, on or about the fifteenth day of June, 1896, when the voyage of said schooner *Frederick Gerring, Jr.*, would have probably ended except for her seizure by the Canadian authorities, was ten dollars and fifty cents (\$10.50) per barrel.

FRED L. DAVIS.

Subscribed and sworn to before me this sixteenth day of December, A. D. 1912.

FRED E. MORRIS,
Notary Public.

(Seal.)

EXHIBIT 32.

Preamble and Article 1 of Treaty of 1818.

TREATY OF OCTOBER 20, 1818.

(Ratifications exchanged, January 30, 1819.)

The United States of America, and His Majesty the King of the United Kingdom of Great Britain and Ireland, desirous to cement the good understanding which happily subsists between them, have, for that purpose, named their respective Plenipotentiaries, that is to say:

The President of the United States, on his part, has appointed Albert Gallatin, their Envoy Extraordinary and Minister Plenipotentiary to the Court of France; and Richard Rush, their Envoy Extraordinary and Minister Plenipotentiary to the Court of His Britannic Majesty:—and His Majesty has appointed the Right Honorable Frederick John Robinson, Treasurer of His Majesty's Navy, and President of the Committee of Privy Council for Trade and Plantations; and Henry Goulburn, Esq., one of His Majesty's Under Secretaries of State:—

Who, after having exchanged their respective full powers, found to be in due and proper form, have agreed to and concluded the following articles.

ARTICLE I.

Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof, to take, dry and cure fish on certain coasts, bays, harbours, and creeks of His Britannic Majesty's Dominions in America, it is agreed between the high contracting parties, that the inhabitants of the said United States shall have forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the Southern Coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the Western and Northern Coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours and creeks from Mount Joly on the Southern Coast of Labrador, to and through the Straights of Belleisle and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson Bay Company. And that the American fishermen shall also have liberty forever, to dry and cure fish in any of the unsettled bays, harbours, and creeks of the Southern part of the coast of Newfoundland hereabove described, and of the Coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce forever, any liberty, heretofore enjoyed or claimed by the inhabitants thereof, to take, dry or cure fish on, or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's Dominions in America not included within the above-mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.

* * * * *

Done at London this twentieth day of October, in the year of our Lord one thousand eight hundred and eighteen.

ALBERT GALLATIN. (L. S.)

RICHARD RUSH. (L. S.)

FREDERICK JOHN ROBINSON. (L. S.)

HENRY GOULBURN. (L. S.)

EXHIBIT 33.

British Act of June 14, 1819.

(59 Geo. III. Cap. 38.)

AN ACT to enable His Majesty to make Regulations with respect to the taking and curing Fish on certain parts of the Coasts of Newfoundland, Labrador, and His Majesty's other Possessions in North America, according to a Convention made between His Majesty and the United States of America.

Whereas a Convention between His Majesty and the United States of America was made and signed at London, on the Twentieth Day of October, One Thousand Eight Hundred and Eighteen; and by the first Article of the said Convention, reciting that differences had arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry and cure fish in certain coasts, bays harbours and creeks of His Britannic Majesty's Dominions in America, it is agreed, that the inhabitants of the said United States shall have forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the Southern Coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the Western and Northern Coasts of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours and creeks from Mount Joly on the Southern Coasts of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast without prejudice, however, to any of the exclusive rights

of the Hudson's Bay Company; and it was also by the said Article of the said Convention agreed, that the American fishermen should have liberty forever to dry and cure fish in any of the unsettled bays, harbours and creeks, of the Southern part of the Coast of Newfoundland above described, and of the coast of Labrador but that so soon as the same, or any portion thereof, should be settled, it should not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors or possessors of the ground: And whereas it is expedient that His Majesty should be enabled to carry into execution so much of the said Convention as is above recited, and to make regulations for that purpose:

Be it therefore enacted by The King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act, it shall and may be lawful for His Majesty, by and with the advice of His Majesty's Privy Council, by any order or orders in Council, to be from time to time made for that purpose, to make such regulations, and to give such directions, orders and instructions to the Governor of Newfoundland, or to any officer or officers on that station, or to any other person or persons whomsoever, as shall or may be from time to time deemed proper and necessary for the carrying into effect the purposes of the said Convention, with relation to the taking, drying and curing of fish by inhabitants of the United States of America, in common with British subjects, within the limits set forth in the said Article of the said Convention and hereinbefore recited; any Act or Acts of Parliament, or any law, custom or usage to the contrary in anywise notwithstanding.

II. And be it further enacted, that from and after the passing of this Act it shall not be lawful for any person or persons, not being a natural born subject of His Majesty, in any foreign ship, vessel or boat, nor for any person in any ship, vessel or boat, other than such as shall be navigated according to the laws of the United Kingdom of Great Britain and Ireland, to fish for, or to take, dry or cure any fish of any kind whatever within three marine miles of any coasts, bays, creeks or harbours whatever, in any part of His Majesty's Dominions in America, not included

within the limits specified and described in the first Article of the said Convention, and hereinbefore recited; and that if any such foreign ship, vessel or boat, or any persons on board thereof, shall be found fishing or to have been fishing, or preparing to fish within such distance of such coasts, bays, creeks or harbours, within such parts of His Majesty's Dominions in America out of the said limits as aforesaid, all such ships, vessels and boats, together with their cargoes, and all guns, ammunition, tackle, apparel, furniture and stores, shall be forfeited, and shall and may be seized, taken, sued for, prosecuted, recovered and condemned by such and the like ways, means and methods, and in the same courts, as ships, vessels or boats may be forfeited, seized, prosecuted and condemned for any offence against any laws relating to the revenue of customs, or the laws of trade and navigation, under any Act or Acts of the Parliament of Great Britain, or of the United Kingdom of Great Britain, and Ireland; provided that nothing in this Act contained shall apply, or be construed to apply to the ships or subjects of any Prince, Power or State in amity with His Majesty, who are entitled by treaty with His Majesty to any privilege of taking, drying or curing fish on the coasts, bays, creeks or harbors, or within the limits in this Act described.

III. Provided always, and be it enacted, that it shall and may be lawful for any fisherman of the said United States to enter into any such bays or harbours of His Britannic Majesty's Dominions in America as are last mentioned, for the purpose of shelter and repairing damages therein, and of purchasing wood and of obtaining water, and for no other purpose whatever; subject nevertheless to such restrictions as may be necessary to prevent such fishermen of the said United States from taking, drying or curing fish in the said bays or harbours, or in any other manner whatever abusing the said privileges by the said Treaty and this Act reserved to them, and as shall for that purpose be imposed by any order or orders to be from time to time made by His Majesty in Council under the authority of this Act, and by any regulations which shall be issued by the Governor or person exercising the office of Governor in any such parts of His Majesty's Dominions in America, under or in pursuance of any such order in council as aforesaid.

EXHIBIT 34.

Sections 3 and 20 of Canadian R. S. of 1886, C. 94.

3. Any one of the officers or persons hereinbefore mentioned may bring any ship, vessel or boat, being within any harbor in Canada, or hovering in British waters, within three marine miles of any of the coasts, bays, creeks or harbors in Canada, into port, and search her cargo, and may also examine the master upon oath touching the cargo and voyage; and if the master or person in command does not truly answer the questions put to him in such examination, he shall incur a penalty of four hundred dollars; and if such ship, vessel or boat is foreign, or not navigated according to the laws of the United Kingdom or of Canada, and (a) has been found fishing or preparing to fish, or to have been fishing in British waters within three marine miles of any of the coasts, bays, creeks or harbors of Canada, not included within the above mentioned limits, without a license, or after the expiration of the term named in the last license granted to such ship, vessel or boat, under the first section of this Act, or (b) has entered such waters for any purpose not permitted by treaty or convention, or by law of the United Kingdom or of Canada for the time being in force, such ship, vessel or boat and the tackle, rigging, apparel, furniture, stores and cargo thereof shall be forfeited. 49 V., c. 114, s. 1.

20. This Act shall apply to every foreign ship, vessel or boat in or upon the inland waters of Canada; and the provisions hereinbefore contained in respect of any proceedings in a court of vice-admiralty shall, in the case of any such foreign ship, vessel or boat, apply to the Maritime Court of Ontario and to the superior courts, and any penalty or forfeiture under this Act may be recovered or enforced in any of such courts in the Province within which the cause of prosecution arises. 31 V., c. 61, s. 20.

EXHIBIT 35.

The Consul-General at Halifax to the Secretary of State.
No. 172.

AMERICAN CONSULATE-GENERAL.
Halifax, N. S., January 24, 1913.

Subject: Acknowledging Department's Instructions No. 117, of
January 13, 1913.

THE HONORABLE

THE SECRETARY OF STATE,
Washington.

SIR:

I have the honor to acknowledge receipt of Department's instructions No. 117, and in obedience to instructions I am inclosing herewith information asked for in connection with the sale of the vessel *Frederick Gerring, Jr.*

It seems this vessel was sold at auction and was knocked down to the Marine Fisheries and was afterwards, so I am informed, converted into a light-ship for this coast.

I have the honor to be,

Sir,

Your obedient servant,

JAMES W. RAGSDALE,
Consul-General.

[*Enclosure.*]

In re Frederick Gerring, Jr.

*Extract from books of the late Sheriff D. Archibald, Marshal of
the Vice Admiralty Court at Halifax.*

Sheriff's Office, Aug. 31st, 1896,

Cause: THE QUEEN, Plaintiff,
and

THE SHIP *Frederick Gerring, Jr.*, HER CARGO, TACKLE, RIGGING,
FURNITURE, APPAREL AND STORES, Defendant.

Property as follows:

58 bbls. No. 3 Mackerel	@ \$8.80 per bbl.....	\$510.40
57 bbls. of sour Mackerel	@ 5.10 " "	290.70
3 bbls. rusty Mackerel	@ 4.00 " "	12.00
		<hr/>
		\$813.10

Costs. Labor, advertising, custody, storage, etc., in all	\$207.55
	<hr/>
	\$606.55

Paid over to Messrs. Borden, Ritchie & Co., Solicitors of the Atty. Gen'l of Canada	\$606.55
--	----------

Sale of schooner and contents to the Marine Fisheries:

Schooner <i>Frederick Gerring</i>	\$800.00
Purse seine	40.00
Seine boat	20.00
2 dories	10.50
	<hr/>
	\$870.50

To Commission	\$21.75	
" Advertising	13.60	35.35
	<hr/>	<hr/>
		\$835.15

Above was sold at public auction on May 1st. 1899, by James Duggan & Sons at Halifax, N. S.

[Enclosure.]

Copy of Letter to Sheriff Archibald.

Halifax, N. S., Sept. 15th, 1896.

QUEEN vs. *Gerring*.

DEAR SIR:

I beg to request that you will hand over the custody of the schooner *Frederick Gerring, Jr.*, and her seine, tackle and other

property now in your custody in this action to the agent of the Marine and Fisheries Department here.

Yours faithfully,

(Sgd) W. B. A. RITCHIE.

TO DONALD ARCHIBALD, ESQ.

Marshal, City.

[Enclosure.]

Halifax, N. S., May 1, 1899.

Sales by
James Duggan & Sons.

By order and for a/c Marine and Fisheries Department:

Schooner <i>Frederick Gerring</i>	\$800.00	
Purse seine	40.00	
Seine boat	20.00	
2 Dories @ \$5.25	10.50	
		<hr/>
		\$870.50
To Commission	\$21.75	
“ Advertising	13.60	35.35
		<hr/>
		\$835.15

Paid

JAMES DUGGAN & SONS.

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NOVA SCOTIA

SOUTH EAST COAST
POPE HARBOUR TO LISCOMB HARBOUR

REVISED BY CAPT. BATHURST OF CANADIAN MARINE
SHEETS BY CAPT. BATHURST OF CANADIAN MARINE
1857

Scale of Yards
0 1000 2000 3000 4000 5000

REVISIONS AND ADDITIONS
Revised by Capt. Bathurst of Canadian Marine
1857



Longitude from Greenwich

ADMIRALTY CHART

NOVA SCOTIA

SOUTH-EAST COAST

**Pope Harbour to Liscomb
Harbour**

